4252

SUPREME COURT OF THE UNITED STATES.

No. 132.

GEORGE B. MOREWOOD, JOHN R. MOREWOOD, AND FREDERIC R. ROUTH, APPELLANTS,

vs.

LORENZO N. ENEQUIST, OWNER OF THE BRIG GOTHLAND, LIBELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the [SEAL.] southern district of New York, in the second circuit, this thirtieth day of October in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

KENNETH G. WHITE, *Clerk*.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, George F. Betts, clerk of the district court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the [SEAL.] southern district of New York, in the second circuit, this sixteenth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

GEO. F. BETTS, *Clerk*.

ROB'T DODGE,
Proctor for Appl't.

Fo. 1 At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, district judge.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD, JOHN R. MOREWOOD and FREDERIC R. ROUTH.

[REC. CXXXII, D. T. 1859.]—1

1856, March 29th. The libellant files his libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the district
2 court of the United States for the southern district of New York:

The libel and complaint of Lorenzo N. Enequist, owner of the brig Gothland, against George B. Morewood, John R. Morewood and Frederic R. Routh, composing firm of G. B. Morewood and Company, merchants, of the city of New York, respectfully shows:

First. That this is an action on contract, civil and maritime, and said defendants are in this district.

Second. That the libellant carried and conveyed from Batavia to New York a cargo of coffee and spices, India-rubber, &c.,
3 for the respondents, who were the consignees thereof, and who received and accepted the same, and who became bound to pay the freight thereon, amounting to $9,160 $\frac{56}{100}$, with interest from April, 1853.

Third. That payment has been demanded and refused.

Fourth. That all and singular the premises are true and within the jurisdiction of this court.

Wherefore the libellant prays for a warrant of arrest with clause of foreign attachment, and that this court would be pleased to pronounce for the claims aforesaid, and costs, or for such relief as may be just.

L. N. ENEQUIST,
By C. DONOHUE.

Sworn to before me, this 29th day of March, 1856.

JOSEPH BRIDGHAM,
U. S. Com'r.

BEEBE & DONOHUE,
For Libl't.

4 (*Endorsed:*)

13. 291. U. S. district court. Lorenzo N. Enequist vs. George B. Morewood, &c. &c. Libel.

BEEBE & DONOHUE,
For Libl't.

Filed 29th March, 1856.

District Court of the United States, for the southern district of New York.

Filed the twenty-ninth day of March, 1856.

Stipulation for Libellant's Costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the twenty-ninth day

of March, in the year of our Lord one thousand eight hun-
5 dred and fifty-six, by Lorenzo L. Enequist against George B. Morewood, &c., &c., for the reasons and causes in the said libel mentioned, and praying that a warrant of arrest with clause of foreign attachment may issue against the defendants, and the said libellant and Charles Donohue, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of one hundred dollars:

6 Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of one hundred dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

L. N. ENEQUIST,
By C. DONOHUE.
C. DONOHUE.

Taken and acknowledged, this 29th day of March, 1856, before me.

JOSEPH RRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

7 Charles Donohue, party to the above stipulation, being duly , doth depose and say that he resides in the city of New York; that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

C. DONOHUE.

Sworn to, this twenty-ninth day of March, 1856, before me.
JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 29th day of March, 1856.

G. F. B., *Clerk.*

At a stated term of the district court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the 1st day of April, in the year of our Lord one thousand eight hundred and fifty-six: present, the Honorable Samuel R. Betts, district judge.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD and others. } 13. 291.

The marshal having returned the process in personam, issued in the above entitled cause, Mr. Robert Dodge consents to appear for the respondents. On motion of Mr. Dodge, it is ordered,
12 that the appearance of the respondents be entered, and that they have 10 days' time to file and perfect their answer to the libel on file.

Respondents' Costs.

District Court of the United States, for the southern district of New York.

Filed the eighth day of April, 1857.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the 29th day of March, in the year of our Lord one thousand eight hundred and fifty-six, by Lorenzo N. Enequist against George B. Morewood and
13 al., for the reasons and causes in the said libel mentioned, and praying that process in personam may issue against the said respondents, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the respondents or their surety, execution for the sum of one dollars may issue against their goods, chattels and lands:

And whereas also, an answer has been filed in said cause by said respondents: Now, therefore, it is hereby stipulated and
14 agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of one hundred dollars, conditioned that the respondents above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

J. R. MOREWOOD,
ROB'T DODGE.

Taken and acknowledged, this eighth day of April, 1857, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John R. Morewood and Robert Dodge, parties to the
15 above stipulation, being duly sworn, doth each depose and say, that he resides in the city of New York, and that he is worth the sum of two hundred dollars, over and above all his just debts and liabilities.

J. R. MOREWOOD,
ROB'T DODGE.

to, this eighth day of April, 1857, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 8th day of April, 1857.

G. F. B., *Clerk.*

District Court of the United States for the southern district of New York.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The answer of George B. Morewood, John R. Morewood, and Frederic R. Routh, of the city of New York, to the libel of Lorenzo N. Enequist, alleges as follows:

16 First. They admit the first allegation of said libel.

Second. That as to the matters contained in the second and third articles of said libel, they deny the same as in great part untruly alleged, and that the truth is as is hereinafter alleged.

Third. That, as these respondents are informed and believe, on or about the 10th day of November, 1853, at Padung, in the island of Sumatra, by their agents, J. Ellracht & Co., of Padung aforesaid, and on or about the 3d day of December, 1853, at Batavia, in the island of Java, Burt, Myrtle & Co., merchants of
17 Batavia aforesaid, (of which said last firm of Burt, Myrtle & Co., of said Batavia, and Myrtle, Burt & Co., of Manchester, England; these respondents were the assignees, consignees of the goods hereinafter mentioned, by endorsement of the bills of lading thereof for value,) shipped in good order and condition upon the ship or brig Gottland, whereof said libellant claims to be owner, to be delivered in like good order and well conditioned, at the port of New York, to order, the act of God, the Queen's
18 enemies, fire, and all and every other damages and accidents of the seas, rivers, and navigation, of whatever nature or kind soever, excepted, and thereupon bills of lading were in such form duly executed by the master thereof, and duly endorsed to the respondents, the following goods and merchandise, viz:

646 bags of black pepper.
15 casks of mace.
21 " " nutmegs.
90 baskets of India-rubber.
599 mats, packages of cassia.
1,206 bundles of ratans.
19 10,915 bags of coffee.

That said 1,206 bundles of ratans were shipped as dunnage, freight free.

That said cargo was improperly stowed on board of said vessel,

and not according to the established and well known usage of stowage of cargo on such voyages.

And that by the acts and neglects of the master and others in charge of said vessel, during her said voyage, in not taking the necessary and customary measures for ventilation, or by
20 some other or wilful act or neglect, or omission of care and duty by said master, officers or crew, and not by any act of God, public enemies, fire, perils of the sea, or unavoidable result of performance of duty, or from any nature or defects of said cargo, the said cargo, on its arrival at this port, on or about the 24th day of March, 1854, was not in good order and well conditioned, but, on the contrary, a very large part thereof was, by the negligence of those in charge of the said ship as aforesaid, and not by any peril of the sea or other cause, excepted as aforesaid, greatly
21 damaged and injured, to the extent and in the manner following, that is to say:

101 bags of black pepper.....	$74 31
599 mats of cassia.....	684 44
2,739 bags of coffee.....	3,961 85
	$4,720 60

Which said sum of four thousand seven hundred and twenty dollars and sixty cents for the said damage, these respondents are advised, and insist, ought to be deducted from any amount which may be recoverable by the libellant for freight of said cargo; and further, that upon the arrival of said cargo, and before any
22 suit brought, these respondents have sincerely offered to pay to the owner of said vessel, or party really entitled, any legal claims for freight, provided said amount of damage were first deducted therefrom, and have at all times made such offer sincerely and in good faith, and have repeated the same since suit was brought, and are now willing and ready to perform the same, but that such offers have always been refused.

Fourth. That whether the libellant was the owner, or sole owner of said vessel, or entitled to recover freight herein, these
23 respondents leave the libellant to prove the same as he may be advised.

Fifth. That all and singular the premises are true.

Wherefore these respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

J. R. MOREWOOD.

ROBT. DODGE,
Proctor for Resp'dts.

4256.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John R. Morewood, of said district, one of said respondents, being sworn, saith, that the foregoing answer is true of
24 his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

J. R. MOREWOOD.

Sworn before me this 18th day of April, 1856.

GEO. W. MORELL,
U. S. Com'r south. dist. of New York.

(*Endorsed:*)

13. 291. U. S. district court, southern district N. Y. George B. Morewood & al. ads. Lorenzo N. Enequist. Answer.

ROBT. DODGE, *Proct's Respdts.*

25 Filed April 19, 1856.

U. S. District Court.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD, JR.

We hereby consent to submit to the court for its decision on the trial of this cause the question of liability of the ship for the damage to the cargo; libellant admitting the making and delivery of the bills of lading for the goods produced by the respondent, and their assignment for value to the respondent, reserving for future disposition all other points in the cause. The depositions
26 heretofore taken on both sides in the case of Enequist vs. 10,545 bags of coffee to be used in this case.

Dated New York, Oct. 30, 1856.

BEEBE & DONOHUE, *Prs. for Liblt.*

(*Endorsed:*)

U. S. district court. Enequist vs. Morewood. Stipulation. Rec'd Oct. 30, 1856.

U. S. District Court.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD and others.

BEEBE & DONOHUE, *for Lib.*
ROB'T DODGE,
And E. C. BENEDICT, *for Respdts.*

Tuesday, June 30, 1857.—Pleadings read; liability of ship; charter party; bills of lading; damages to cargo; set-off; freight.

Wednesday, July 1st, continued.

Oct. 17, 1853.—Reads, subject to objection, charter party to Burt, Myrtle & Co., from C. J. Faurons, master of brig Gottland,
27 at Batavia, from Batavia to Padung, island of Java; 5 bills of lading from Padung and one from Batavia.

Oct. 30, 1856.—Stipulation between parties; (points submitted.)

Answer admits delivery of cargo, but asserts that part was delivered in a damaged state.

Carl J. Teaurons, (deposition,) master of brig. See p. 21, 22, 40.

Jorgen Munster, do. mate do. See p. 22.

John Anderson (sworn.) Formerly seaman 14 y'rs; was on board; 2d mate; joined her in London; went in her to Melbourne; thence to Batavia; thence to Padung; there took in cargo; witness sometimes attended to stowing it, and sometimes another
28 man; it was cargo, most of it, and coffee; had some cassia; cannot say whether taken at Padung or Batavia; had some pepper; firewood stowed at bottom of vessel, next the skin; ratans on the top of wood, and mats on top of ratans, and coffee in middle of ship on the mats. The vessel was lined with mats all through, and in most places double lined, and the coffee was stowed on the mats; no cargo was stowed on the coffee nor mixed in with coffee. Pepper was stowed aft, a bulkhead between it and the coffee; could not touch each other; cassia stowed forward
29 also; India-rubber lying at bottom, and cassia on mats above rubber. The coffee was passed down into hold by hand-men standing on ladder, and bags passed from one to the other down the hatch; last of cargo taken in at Batavia; voyage 98 days from that to N. Y.; fine weather till vessel got on the coast; weather very hot at Batavia, and warm on passage; very cold when got on the coast; snow, hail, and blowing.

Was compelled to lie to at times on coast on account of the weather; for 2 or 3 days could not carry sail; sea was very heavy; decks washed; sea coming over them all the time; she had 5
30 hatches; boats stowed over main hatch, so it could not be opened; some old spars also lying alongside that hatch—that was usual place for carrying her boats. Main hatch was 6 to 7 feet in length, and bulkhead about 20 feet back, and probably 15 to 16 feet to bulkhead forward of main hatch—coffee filled that space.

Vessel did not make more water than usual; her seams did not open on deck; she only made about 20 inches in 24 hours; pumped every watch about 10 minutes; had the hatches off almost every day when the weather would permit—2 forward and 2 aft; off more than half the time; witness was on board whilst ves-
31 sel was discharging; some of the cargo, upper tier, and wrappers around it, was sweat; did not see any other part was sweat; mats on the top were rotten; those on side of ship were all dry; did not see cargo on voyage; found hold was very warm,

suffocatingly so; could not stay below at all; not wet from water; hold all dry in bottom; could not see any fume or steam coming out of hold; had no sails or preparations rigged for getting air into hold; saw nothing injured except top tier of coffee; no part of cargo was lost to his knowledge—all was delivered which
32 was taken on board.

Cross-ex'd: Left the ship 15 April, 1854, when she was discharged.

Joseph Tinkham (sworn.) Marine surveyor; spring 1854 (and from 1853) surveyed this vessel and cargo; first surveyed hatches March 28th; found them well secured, and found great quantities of sweat on cargo, which consisted of cassia and bags of coffee below main hatch; April 3, surveyed cargo of coffee again; found it well stowed; the sides of vessel well dunnaged with ratans, and covered with mats; great quantity of coffee wet by sweat, and bags rotten, caused by moisture and heat of hold, and
33 under side of deck wet by exhalation of water standing on ceiling. April 4, surveyed again, and found like result; sides of vessel, below under tier, dry, and above and through upper tier moist from sweat; could not trace any leakage of salt water through the deck; moisture was undoubtedly condensation of atmosphere in passing from hot to cold weather; continued survey to 8th April, as cargo was removed; found ground tier perfectly dry, and so to about 3d tier from top, (stowed about 12 tiers;) sweat extended from 2 to 3 tiers, going deeper at some places than
34 others; stowage was excellent; never saw hold of vessel better dunnaged; had extra dunnage of ratans; her tonnage 200 to 220; 8 men would be a large crew; 6 to 8 are usual crew for foreign vessel; 5 for an American vessel; vessel appeared in excellent condition, and well officered; a similar condensation of air in hold takes place in other cargoes—not confined to coffee at all—will occur in coming from hot to cold climate; has surveyed many Swedish vessels; never saw one of that size with ventilators.

Cross-examined: Never sailed in East Indies—altogether in European voyages; the hatches were opened in his presence;
35 they were perfectly secured—battoned down, and secured with tarpaulings—battens nailed down on combings over tarpaulings; main and fore hatches opened in his presence; thinks cargo was not regularly matted over top; saw some there; cargo was stowed close up to deck; saw coffee and cassia under main hatch; coffee was in bags of very slight texture, cotton or linen; cassia was in bundles and boxes.

1st and 2d tiers of bags rotten and destroyed, and coffee black and spoiled; bags were stowed directly upon each other—lay close together.

Re-direct: It would have been very unsafe to vessel and cargo to have kept the hatches off on coming on to the coast in

36 March; the boats were properly stowed, and indeed only place for stowing in ships of her class.

Re-cross: Known condensation from change of temperature to produce in a single night condensation and moisture, so as to wet cargo as badly as in this vessel.

William A. Sale (sworn.) Merchant in East India trade since 1838; been in habit of receiving cargo similar to this one; this was usual cargo brought here in that trade.

Cross-examined: Been in business in Calcutta, but not resided in any part of the Straits, or been there personally.

37 John Hanson (sworn). Stevedore for 6 or 7 years; was so in spring of 1854; discharged Gothland from 1st to last; was there when hatches were taken off; were well secured in every respect; the top tier of cargo was damaged by sweat; mats covered over that; the dampness was not from leakage without, but by sweating, except a few bags lying near pump, which seemed to be dampened by leakage; it is a common thing for vessels to be damaged by sweat; has discharged other vessels, with this kind of cargo, from Padung and other East India ports; this cargo was well stowed; sweating is experienced in vessels coming from a hot into a

38 cold climate; been 15 to 18 y'rs at sea; boats were properly stowed at only place where could be put; vessel of her size would incur risk by using ventilators; not prudent to loose hatches in approaching coast in March.

Cross-examined: Coffee was stowed by itself; cassia and other articles chiefly by themselves; no recollection of seeing them mixed up promiscuously.

Charles Nash (sworn.) Stevedore and bag manufacturer; stevedore since 1844; 22 years a seaman; has discharged 20 to 30 or more vessels with cargoes from Padung, and similar to the cargo in question—with shellac at times; has seen coffee and pep-

39 per in bulk in same ship; the stowage of this vessel as described was good in his opinion; all old-fashioned vessels will sweat; water will settle to *to* their sides so that he can scrape off dampness with his hand; not safe to have hatches loose off this coast in March; main hatch proper place for stowing main boat, and never knew 200 ton brig have ventilators.

Cross-examined: Never saw this particular vessel; been voyages to and from East Indies; did not bring cargo like this; has discharged them.

Michael K. Wilson (sworn.) Stevedore 18 y'rs; done a great deal of work in the business; discharged a good many vessels

40 with like lading with this, coming from ports of Straits; considers the stowage very good; injury by sweat to cargo occurs constantly from change of climate; wit. discharges more cargo than any man in U. S.; works for 5 packet lines in coffee trade; protests against it by hauling off hatches when climate admits; the diffi-

culty is experienced in winter, spring, and fall, not summer. Witness has followed sea for 13 y'rs; not safe to come on this coast in March with hatches loose; vessels of this size do not have ventilators, nor of 400 tons; on such vessel the place to stow the two boats is over main hatch.

41 Cross-examined: Has stowed coffee to any extent in N. Y. for exportation, and also cassia; never brought in such cargo.

William Thompson (sworn.) Marine surveyor 10 y'rs, shipmaster 28 y'rs; last Oct'r, ex'd assorted cargo of ship Lancaster, from Singapore; this is about the same as cargoes in that trade; stowage of this vessel was first-rate. The sweat is a common thing in winter season; the sweating arises from change of climate; would not by any means be safe for such vessel as this to come on this coast in March with her hatches open. Her boats must necessarily be stowed over main hatch; it would not be safe or

42 proper in winter to stow them on small houses; a ventilator to a vessel like this, would do more damage than service to any cargo.

Cross-examined: There would be no sweat if cargo is kept in same temperature with climate; there would be no sweat; 40 y'rs at sea; not in E. India trade; ventilators not been in use for more than about 8 y's; different kinds tried; some are positively injurious.

Francis Holton (sworn.) Stevedore since 1825; has discharged E. I. ships with spices, &c., &c.; the stowage of this vessel was good; finds the sweat generally in cargoes of spices and cof-

43 fee; he supposes caused by coming out of warm into a cold climate; was 15 y'rs at sea; boats of this vessel could be stowed nowhere but over main hatches; a vessel so small not fit for ventilators; known cargo damaged in vessel 3 times her size, by ventilators; unsafe to come on coast in cold weather with hatches off.

Cross-examined: Boats are placed too near hatch to admit of its being raised conveniently whilst boat is over it. Was on board this vessel when she was discharging; did not examine her condition, or stowage of cargo.

44 Smith Place (sworn.) Stevedore. (Same.)

Thomas Kainan (sworn.) Stevedore. (Do.)

John Anderson, (again.) Put his hatches on when vessel came into cold weather; could not leave them off after getting there.

Cross-ex'd: Boats were lashed to ring-bolts on deck, and put on two chocks over main hatch, one forward and one aft; keel might be two inches from keel to hatch; enough to clear it.

Defence.

William G. Bally, (deposition.) See pp. 26. 27.

John H. Ankers, (deposition.) See pp. 23, 24, 25.

James W. Low (sworn.) Inspector of Commercial Ins.
45 Marine Office; saw this vessel and her cargo; was sent to examine both; both insured in their office; saw top of cargo was much damaged by sweat; bags app'd rotten about 4 inches in depth down; saw no mats at all; mats might have been placed there and rotted, so as to appear as bags; saw sweating standing on deck, and would form a kind of string, glutinous, several inches in length; had the appearance of having been collecting or forming for some time, from having so much substance; thinks cargo had been originally stowed close to deck, and had settled 3
46 or 4 inches; only top tier was rotted; saw 1st mate on board; only noticed the coffee—did not notice rest of cargo; has been in China trade, and has carried coffee from N. Y. to Europe in summer season; not much difference in temperature at that season; ventilators will check sweating of vessel, but it is hard to get clear of it wholly.

Cross-examined: Thinks ventilation may be made serviceable to a greater or lesser degree. Vessel very dry at bottom and wet at top; temperature in hold was very warm; and so was cargo when he went down in it; damaged cargo was black like mould,
47 and rotten; mats on sides rotted down as far as coffee was rotted, as badly as the bags; the damage was caused by the sweating, and not by salt water; made no report; supposes matting would have absorbed water some, but was so much dampness does not know it could have protected the coffee in this case. If air could have been circulated through the hold, it would have no doubt been serviceable; thinks vessel was very well stowed; thinks a wind sail might have been put in so as to afford some
48 ventilation. The boats might have been so stowed, if hatches had been fitted for the purpose, so as to slide them and let in some ventilation. It would not have been impossible to move the boats.

Thursday, July 2d—Continued.

Augustus F. Dow (sworn.) Merchandise broker; has seen cargo of the brig in March, 1854, soon after her arrival in port. When he first went to ship they were beginning to break bulk to discharge. The hold was very nearly chock full; very little space between cargo and ceiling of vessel; no mats at all spread over the cargo. Witness was there to get samples from bags or mats (as called) of coffee; top of coffee was badly damaged; was nearly
49 black and rotten; thinks two or three tiers were damaged, but the top tier much the worst. The bags were grass mats, containing about 60 lbs.; article sells better in that kind of package; sometimes bags contain 40 to 80 lbs. Bags are very thin and tender, and may be more easily affected by dampness than hemp

or cotton; was at ship several times afterwards, and saw state of cargo; some of coffee got loose and spilled out of broken bags as it was removing. At the sale there was found in coffee which had been re-bagged (of that leaked out) occasionally pieces of pepper or spices. Estimated damages from all causes to be two cents per lb. The black portion was valueless of itself. The cassia he saw on the wharf was mouldy to some degree, and was resold
50 at deduction of two cents per lb.; 100 bags out of 700 damaged, but very slightly indeed; difference of about ¼ of a cent per lb. Cassia is wild cinnamon, a kind of bark; comes in packages.

Cross-examined: Coffee was sold at private sale, on board the ship, to Sturgis, Bement & Co.; none of it discharged from the vessel at time of sale. Ex'd several hundred bags; cannot specify exactly, but inside of 1,000; cargo contained 10,000. Part of coffee in separate bags would be damaged differently; the bags most damaged would be more or less injured, generally most injured at tops of bags; result was got at by estimating generally the average injury.

Alexander B. Clark (sworn.) Inspector of Sun Mutual
51 Ins. Office; been formerly master of ships in eastern and Rio voyages; carried coffee, hides, &c.; has experienced sweat; mats will not act of preventation of sweat; hides more generally used for that. In voyage in summer months would not like to have hatches off in a small vessel of 200 tons; showers are very frequent and sudden.

Cross-examined: Long-boat usually stowed over hatches; no other place to stow them; not good seamanship to have main hatch opened after leaving port; should be caulked and battened down. Vessels will sweat in coming in from low latitudes to higher; has had cargo of coffee greatly damaged by sweating in heavy bags, and when hides were spread over them but had worked off. Considers, from description, that the cargo was well stowed and
52 according to usual mode.

John Smith (sworn.) Porter of Sturgis, Bement & Co. Witness was sent to ship to examine cargo and see if it was sound. Some part of cargo was out when he got there; did not remember condition of cargo; took sample of some of coffee; some of it was musty and some damp. Saw some pepper and cassia on the deck—at least what was called pepper; did not think it so; sampled afterwards every bag; at first only sample to purchase by.

Howland McComber (sworn.) Inspector of C. H. in 1854; was on the brig; had charge of her discharge as C. H. officer. The coffee was badly damaged on top; thinks ran down 2 or 3
53 tiers; top part very much affected on top and sides; sides and top of vessel badly sweated; a dampness roped down it, as it were. His impression is there was no covering over the cargo.

Cross-examined: His attention was called to the coffee as soon as hatches were taken off; could see the black mark down in opening between bags.

For Libellant.

Thomas Kainan, (again.) Assisted in discharging vessel; had begun when he arrived; some coffee got out when he came there; saw mats taken out of hold and laid on deck; no coffee in them.

John Hanson, (again.) It would be dangerous thing to leave bags of coffee a foot or more below deck, for in heavy blow cargo would shift, in a small vessel, so as to capsize vessel.

54 Mr. Benedict argues for respondents.

Mr. Beebe " in reply.

Cur. adv. vult.

The libellant then offers to read the following charter-party, to which the respondents' counsel objects. The same is read, subject to such objection.

Batavia, 17 October, of 1853.

Memordandum for Charter.

It is this day mutually agreed between C. T. Farnaus, master of the good ship or vessel called the Gothland, of the burthen of 400 tons, or thereabouts, now lying on the roads of Batavia, and Messrs. Burt, Myrtle & Co., of Batavia, merchants, that the said ship being tight, staunch, and strong, and every way fitted for the voyage, shall with all convenient speed prepare to receive
55 ratans, as much as the captain requires for dunnage, and then to proceed to Padung, in the island of Sumatra, there to load from the charterers' agents about 5,000 peculs of coffee in bags, and any other lawful cargo which they may have there; after which, she is to return to the port of Batavia, and there load the remainder of a full and complete cargo of lawful merchandise, which the said merchants bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture; and being so loaded,
56 shall therewith proceed to New York, United States of America, or so near thereunto as she may safely get, and deliver the same on freight to be paid at the rate of £4 15*s.*—say four pounds fifteen shillings Bh. st'g pr. ton, E. I. Co.'s rates, net weight, delivered, (ratans for dunnage to pay no freight,) restraint of princes and rulers, the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, during
57 the said voyage, always excepted. The freight to be paid on the right delivery and final weighing of the cargo, in cash. The cargo to be weighed according to the custom of New York immediately after the vessel's arrival there. 40 (say forty)

working days are to be allowed the said merchants, if the ship is not sooner despatched, for loading the said ship, and the unloading to be effect with every despatch, according to the customs of the place of discharge. The lay days in all cases to commence when notice is given in writing that the vessel is ready to
58 receive cargo, and ten days on demurrage over and above the said lay days, at ten pounds per day penalty for non-performance of this agreement, (£1,000,) say one thousand pounds sterling.

In witness whereof, six copies of the same tenor and date have been attested, one of which being accomplished, the others to stand void.

At New York the vessel to be consigned to the charterers' agents free of commission.

C. J. FAURONS.
BURT, MYRTLE & CO.

Witness:
ED. SAUER.

59 Endorsed: No. 1.

The cargo to be sent alongside and to be taken from alongside the ship at the charterers' risk and expense.

C. J. FAURONS.

Shipped in good order and well condition by Burt, Myrtle & Co., of Batavia, in the good ship called the "Gothland," whereof is master for this present voyage *Fahrous*, and now riding at anchor in the roads of Batavia, and bound for New York, U. States.

P 280.

L 200.	480, say four hundred and eighty bags black pepper.....	w'g	352 $\frac{27}{100}$	peculs.
M $\frac{1}{15}$.	15, say fifteen casks mace.....	"	9 $\frac{23}{100}$	"
N $\frac{1}{21}$.	21, say twenty-one casks nutmegs..	"	9 $\frac{39}{100}$	"
G	300, say three hundred mat packages cassia.....	"	136 $\frac{99}{100}$	"
A, B, C, D, F. 90, say ninety baskets India-rubber		"	247 $\frac{13}{100}$	"
22 12 5 15 36.	1206, say twelve hundred and six bundles ratans.....	"	50 $\frac{16}{100}$	"
60				

being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned at the aforesaid port of New York, U. States, (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kind soever, excepted,) unto order, or to assigns, he or they paying freight for the said goods, at the rate of £4 15 0—four pounds fifteen shillings

stg. pr. ton, net weight, delivered: say sixteen hundred
61 weight for India-rubber and pepper, fifteen hundred weight for nutmegs, and eight hundred weight for mace and cassia. Ratans as dunnage, freight free, with primage and average accustomed.

In witness whereof, the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date, the one of which five bills being accomplished, the other four to stand void.

Dated in Batavia, this 3d day of December, 1853.

Weight and contents unknown.

C. J. FAURONS.

(*Endorsed:*)

Abstract of Invoice.

P, 280 bags black pepper, w'g 215 $\frac{60}{100}$ peculs, at f. 19 p. p'l.		f. 4,096.40	
L, 200 bags black pepper, w'g 136 $\frac{67}{100}$			
62 peculs, at 18$\frac{1}{4}$ p. p'l..		2,494.23	
Export duty and ship'g charges.....		1,068	
			f. 7,658.63
M $\frac{1}{15}$, 15 casks, w'g 9 $\frac{23}{100}$ peculs mace, at f. 130 p. p'l.....		1,199.90	
Export duty and ship'g charges		284.47	
			1,484.37
N $\frac{1}{21}$, 21 casks, w'g 9 $\frac{39}{100}$ peculs nutmegs, at f. 160 p. p'l.....		1,502.40	
Export duty and ship'g charges		277.60	
			1,780
90 baskets India-rubber, w'g 247 $\frac{13}{100}$ peculs, for.....		8,737.41	
Export duty and ship'g charges		321.59	
			9,059
C, 300 mat packages cassia, w'g 136 $\frac{99}{100}$ peculs, at f. 17 pr. p'l		2,328.83	
Export duty and ship'g charges		186.17	
			2,515
1,206 bundles ratans, w'g 50 $\frac{16}{100}$ peculs, at f. 6 per p'l....		300.96	

Export duty and ship'g charges	33.04	
		334
Commission on above.....		1,141.55
63 Guilders.....		f. 23,972.55

BATAVIA, 3*d December*, 1853.

Deliver to the order of Messrs. Duncan, Sherman & Comp'y.

BURT, MYRTLE & CO.
DUNCAN, SHERMAN & CO.

Shipped in good order and well conditioned by J. Eilbraeht & Co., of Padung, in the good ship called the Gothland, whereof is master for this present voyage C. G. Fahrens, and now riding at anchor in the roads of Padung, and bound for New York, U. States, E, 166 bags of pepper, net wt. 15,115 Dutch pounds; E, 299 packages of cassia lignia, net wt. 17,838 pounds, being marked and numbered as in the margin, and are to be de-
64 livered in the like good order and well conditioned, at the aforesaid port of New York, U. States (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kind soever, excepted) unto order, or to assigns, he or they paying freight for the said goods at the rate of £4 15, say four pounds fifteen shillings, Brit'h sterling, per ton of 16 cwt. for the pepper, and of 8 cwt. for the cassia.

In witness whereof, the master or purser of the said ship
65 hath affirmed to five bills of lading, all of this tenor and date; the one of which bills being accomplished, the other four to stand void.

Dated in Padung, this 16 day of November, 1853.

C. J. FAURONS.

Weights and contents unknown.

(*Endorsed:*)

Abstract of Invoice.

E, 166 bags black pepper, w'g net 120 $\frac{92}{100}$ ps., at f. 19½ p. pl.....		f. 2,357.94
Export duty, ship'g charges and commission	392.77	
		f. 2,750.71

E, 299 mat packages cassia lignia, vera, w'g net 152 $\frac{700}{1000}$ peculs, say 87 peculs, at f. 17 p. pl..... f. 1,479.00
65 $\frac{700}{1000}$ peculs, at 16 p. pl..... 1,051.20
——— f. 2,530.20
Export duty, ship'g charges and commission 433.68
——— 2,963.88

66 Guilders..... f. 5,714.59

At 11 f. p. £, £519 10 2.
Batavia, 23d November, 1853.
B., M. & C'Y.

Deliver to Messrs. Burt, Myrtle & Co., or order.
J. EILBRAEHT & CO.

Deliver to Mess. Duncan, Sherman & Comp'y, or order.
BURT, MYRTLE & CO.
DUNCAN, SHERMAN & CO.

Shipped in good order and well conditioned, by Eilbraeht & Co., of Padung, in the good ship called the Gothland, whereof is master for this present voyage Fahrens, and now riding at anchor in the roads of Padung, and bound for New York, U. States, No. 2,
3,376 mat bags of coffee, net wt. 187,500 Dutch pounds, as
67 specified on the other side, being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned, at the aforesaid port of New York, U. States, (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kind sover, excepted,) unto order or to assigns, he or they paying freight for the said goods at the rate of four pounds fifteen shillings st'g pr. ton of eighteen hundred weight, with primage and average accustomed.

68 In witness whereof, the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date; the one of which bills being accomplished, the other four to stand void.

Dated in Padung, this 16th day of November, 1853.
G. J. FAURANS.

Twelve bags in dispute, if on board to be delivered.

Abstract of Invoice.

No. 2. 3,376 bags coffee, w'g net 1,500 peculs, at 24½ p. p'l	f. 36,750
Export duty, ship'g charges, and commissions	7,380.54
Guilders	f. 44,130.54

Exch'ge $11, £4,011 17 4.

Batavia, 23d November, 1853.

BURT, MYRTLE & CO.

BV	50	2,784		800	46,098		1,600	89,292		2,350	131,072		3,100	172,468	fo. 69
BW	50	2,802	CO	50	2,841	D	50	2,862	T	50	2,913	AJ	50	2,686	
BX	50	2,817	CP	50	2,757	E	50	2,816	U	50	2,830	AK	50	2,645	
BY	50	2,883	CQ	50	2,730	F	50	2,796	V	50	2,719	AL	50	2,674	70
BZ	50	2,895	CR	50	2,674	G	50	2,799	W	50	2,760	AM	50	2,832	
CC	50	2,912	CS	50	3,613	H	50	2,674	X	50	2,859	AN	50	2,791	71
CD	50	3,037	CT	50	2,630	J	50	2,765	Y	50	2,794	AO	26	1,404	
CE	50	2,976	CU	50	2,507	K	50	2,758	Z	50	2,699				
CF	50	2,970	CV	50	2,606	L	50	2,625	AA	50	2,680		3,376	187,500	72
CG	50	2,817	CW	50	2,677	M	50	2,757	BB	50	2,623				
CH	50	2,793	CX	50	2,624	N	50	2,740	CC	50	2,723				
CJ	50	2,812	CY	50	2,673	O	50	2,936	AD	50	2,593				73
CK	50	2,860	CZ	50	2,669	P	50	2,788	AE	50	2,923				
CL	50	2,928	DD	50	2,612	Q	50	2,778	AF	50	2,707				
CM	50	2,914	A	50	2,736	R	50	2,717	AG	50	2,792				74
CN	50	2,898	B	50	2,905										
			C	50	2,961	S	50	2,969	AH	50	2,744				
	800	46,098		1,600	89,292		2,350	131,072		13,100	172,468				

Deliver to Messrs Burt, Myrtle & Co. or order.

Deliver to Messrs. Brown, Brothers & Co., or order.

BROWN BROTHERS & Co.

J. EILBRAEHT & CO. 75

BURT, MYRTLE & CO.

Shipped in good order and well conditioned, by J. Eilbraeht & Co., of Padung, in the good ship called the Gothland, whereof is master for this present voyage C. G. Fahrons, and now riding at anchor in the roads of Padung, and bound for New York, U. States, No. 1, 3,414 mats bags coffee, n't w't 187,500 Dutch pounds, as specified on the other side, being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned, at the aforesaid port of New York, U. States,
76 (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kind soever, excepted,) unto order , or to his assigns, he or they paying freight for the said goods, at the rate of four pounds fifteen shillings st'g p'r ton of eighteen hundred weight, with primage and average accustomed.

In witness whereof, the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date,
77 the one of which bills being accomplished, the other four to stand void.

Dated in Padung, this 16th day of November, 1853.

C. J. FAURONS.

Weight and contents unknown.

Abstract of Invoice.

No. 1. 3,414 bags coffee, w'g net 1,500 peculs, at 24½ p'r p'l.....	f. 36,750
Export duty, ship'g charges, and commission.....	7,388.72
Guilders.....	f. 44,138.72

Exch'ge G. 11—£4,012 12 3.

Batavia, 23 November, 1853.

BURT, MYRTLE & CO.

Mark.	Bags.	Net wt. D'h pounds.	Mark.	Bags.	Net wt. D'h pounds.	Mark.	Bags.	Net wt. B'h pounds.	Mark.	Bags.	Net wt. Dutch pounds.	
				1,100	59,961		2,200	120,252		3,300	181,395	fo. 78
A	50	2,726	X	50	2,629	AU	50	2,586	BS	50	2,703	
B	50	2,753	Y	50	2,705	AV	50	2,666	BT	50	2,652	
C	50	2,738	Z	50	2,684	AW	50	2,714	BU	14	750	79
D	50	2,814	AA	50	2,593	AX	50	2,797				
E	50	2,694	AB	50	2,653	AY	50	2,793		3,414	187,500	
F	50	2,701	AC	50	2,594	AZ	50	2,904				80
G	50	2,745	AD	50	2,677	BB	50	2,811				
H	50	2,718	AE	50	2,699	BC	50	2,552				
J	50	2,660	AF	50	2,674	BD	50	2,634				
K	50	2,643	AG	50	2,760	BE	50	2,961				
L	50	2,803	AH	50	2,667	BF	50	2,973				81
M	50	2,671	AJ	50	2,684	BG	50	2,828				
N	50	2,654	AK	50	2,799	BH	50	2,900				
O	50	2,850	AL	50	2,624	BI	50	2,755				
P	50	2,785	AM	50	2,727	BK	50	2,681				82
Q	50	2,700	AN	50	2,828	BL	50	2,802				
R	50	2,907	AO	50	2,924	BM	50	2,983				
S	50	2,846	AP	50	2,865	BN	50	2,936				
T	50	2,614	AQ	50	2,835	BO	50	2,616				
U	50	2,657	AR	50	2,927	BP	50	2,768				83
V	50	2,712	AS	50	2,933	BQ	50	2,713				
W	50	2,570	AT	50	2,810	BR	50	2,770				
	1,100	59,961		2,200	120,252		3,300	181,395				

84 Deliver to Messrs. Burt, Myrtle & Co., or order.
J. EILBRAEHT & CO.

Deliver to Messrs. Brown Brothers & Co., or order.
BURT, MYRTLE & CO.

BROWN BROTHERS & Co.

Shipped in good order and well conditioned by J. Eilbraeht & Co., of Padung, in the good ship called the "Gothland," whereof is master for this present voyage C. G. Faurons, and now riding at anchor in the roads of Padung and bound for New York, No. 3, 3,365 mat bags of coffee, net wt. 187,500 Dutch pounds, as specified on the other side, being marked and numbered as in the margin, and are to be delivered in the like good order and
85 well conditioned at the aforesaid port of New York, U. States, (the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, excepted,) unto order or to assigns, he or they paying freight for the said goods, four pounds fifteen shillings sterling per ton of eighteen hundred weight, with primage and average accustomed.

In witness whereof, the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date, the one of which five bills being accomplished, the other four to stand void.

86 Padung, 16th November, 1853.
C. J. FAURONS.

Weight and contents unknown.

Marks.	Bags.	Net wt. in D. pounds.	Marks.	Bags.	Net wt. in D. P.	Marks.	Bags.	Net wt. in D. P.	Marks.	Bags.	Net wt. in D. P.	
				900	49,955		1,750	96,618		2,600	144,760	
A	50	2,634	T	50	2,707							
B	50	2,664	U	50	2,714	AL	50	2,871	BD	50	2,600	fo. 87
C	50	2,777	V	50	2,820	AM	50	2,879	BE	50	2,762	
D	50	2,683	W	50	2,796	AN	50	2,783	BF	50	2,880	
E	50	2,724	X	50	2,684	AO	50	2,775	BG	50	2,886	88
F	50	2,636	Y	50	2,653	AP	50	2,734	BH	50	2,766	
G	50	2,752	Z	50	2,711	AQ	50	2,780	BJ	50	2,787	
H	50	2,635	AA	50	2,666	AR	50	2,853	BK	50	2,877	
J	50	3,004	AB	50	2,772	AS	50	2,843	BL	50	2,709	89
K	50	2,847	AC	50	2,767	AT	50	2,818	BM	50	2,782	
L	50	2,832	AD	50	2,829	AU	50	2,867	BN	50	2,735	
M	50	2,877	AE	50	2,686	AV	50	2,931	BO	50	2,815	90
N	50	2,858	AF	50	2,809	AW	50	2,902	BP	50	2,762	
O	50	2,774	AG	50	2,673	AX	50	2,804	BQ	50	2,877	
P	50	2,866	AH	50	2,720	AY	50	2,800	BR	50	2,878	91
Q	50	2,668	AJ	50	2,834	AZ	50	2,833	BS	50	2,810	
R	50	2,869	AK	50	2,822	BB	50	2,833	BT	05	814	
S	50	2,855				BC	50	2,756				
	900	49,955		1,750	96,618		2,600	144,760		3,365	187,500	92

47.65-

Deliver Messrs. Burt, Myrtle & Co., or order.
J. EILBRAEHT & CO.

Abstract of Invoice.

No. 3. 3,365 bags coffee, w'g net 1,500 peculs, at 24½ p. pl	g.	36,750.00
Export duty, ship'g charges and commission	f.	7,378.18
Guilders	f.	44,128.18

At f. 11, £4,011 13 1.

Batavia, 23d November, 1853.

93 BURT, MYRTLE & CO.

Deliver to Messrs. Duncan, Sherman & Comp'y, or order.
BURT, MYRTLE & CO.
DUNCAN SHERMAN & CO.

Shipped in good order and well conditioned, by J. Eilbraeht & Co., of Padang, in the good ship called the "Gothland," whereof is master for this present voyage, Fahreans, and now riding at anchor in the roads of Padung and bound for New York, U. States, 755 mat bags of coffee, net wt. 42,625 Dutch pounds, as specified on the other side, being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned at the aforesaid port of New York, U. States, (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kind soever, excepted,) unto order or to assigns, he or they paying freight for the said goods, at the rate of four pounds fifteen shillings st'g pr. ton of eighteen hundred weight, with primage and average accustomed.

94

In witness whereof, the master or purser of the said ship hath affirmed to five bills of lading, all of this tenor and date, the one of which bills being accomplished, the other four to stand void.

Dated in Padang, this 16th day of November, 1853.

C. J. FAURONS.

Weight and contents unknown.

95

Abstract of Invoice.

No. 4. 755 bags coffee, w'g net 341 peculs, at 24½ pr. pecul	f.	8,354.50
Export duty, ship'g charges and commission		1,675.17
Guilders	f.	10,029.67

At f. 11 p. £911 5 9.

Batavia, 23d November, 1853.

BURT, MYRTLE & CO.

Marks.		Bags.	Wt. in D. pounds.	Marks.	Bags.	Nt. wt. in D. pounds.	Marks.	Bags.	Nt. wt. in D. pounds.
					350	19,980		700	39,580
96	A	50	2,830	H	50	2,936			
	B	50	2,905	J	50	2,776	P	50	2,790
	C	50	2,954	K	50	2,787	Q	05	255
	D	50	2,914	L	50	2,727			
	E	50	2,784	M	50	2,792			
97	F	50	2,854	N	50	2,837			
	G	50	2,739	O	50	2,745			
		350	19,980		700	39,580		755	42,625

Deliver to Messrs. Burt, Myrtle & Co., or order.

J. EILBRAEHT & CO.

Deliver to Messrs. Duncan, Sherman & Com'y, or order.

BURT, MYRTLE & CO.

DUNCAN, SHERMAN & Co.

(*Endorsed:*)

U. S. district court, south. district N. Y. Lorenzo N. Enequist vs. George B. Morewood & al.
Bills of lading in evidence.

ROB'T DODGE, *Att'y.*

Libellants' evidence.

U. S. District Court.

LORENZO N. ENEQUIST
98 vs.
10,545 BAGS OF COFFEE, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Carl J. Farhaus, master of the brig "Gottland," being duly sworn, says, that he has been master of the brig since June, 1850; master of vessel on the voyage from Padang via Batavia; vessel was chartered in Batavia to go to Padung for a freight; went there to get the coffee; all the coffee was taken in at Padang—part of the pepper and part of the cassia; went back to Batavia and
99 got balance of cargo there; the cargo was stowed in the proper manner, as ought to be stowed; the bags handled and laid down as carefully as possible. During the voyage the main hatch could not be opened; the boat was stowed over, and the spars were stowed over it. It is generally so in a vessel of that size. The other hatches were opened whenever the weather permitted. When we got here the cargo was, the upper tier, damaged—a part of the tier by sweat; the rest of the cargo was in as good a condition as a cargo could be brought, as far as con-
100 cerns the coffee; some of the bags of pepper were damaged by sweat; the pepper was forward and aft in the vessel; the coffee midships; a few bags of coffee were damaged not by sweat, I can't say how many; all so damaged were surveyed, about 15 to 20 by salt water; it was impossible for me to tell, through heavy weather on the coast; we had heavy weather on the coast here; a plenty of water came on deck; lying to for two days hand running down the coast here; no other damage that I know of but
101 that; we delivered all the coffee here that we took on board; the bags that the coffee was in was Indian mat bags, so very thin, that at place of loading we had to send many ashore broken; every one was handed in and handed down into the hold in tiers; should think I could lift a thousand of them in one hand—there is hardly any weight in them. Lorenzo N. Enequist is the owner of the vessel; he belongs in Wisburg.

Cross-examined: The cargo was delivered in New York last
102 Saturday, 8th April; I attended to the delivery; we commenced I think Friday, 8 days before that taking to Messrs. Morewood's store.

I didn't see any cassia damaged, except I saw some of the packages damp with sweat. All the cargo was delivered to Messrs. Morewood & Co. or their order. These 7 bills of lading produced were signed by me for this cargo. We sailed back to Batavia from Padang for balance of cargo; I think we left Batavia 7 or 8th December; we arrived there about 22d March last; I consider that a fair passage; never made a voyage from Batavia nor from

103 the East Indies to the U. S. before as master. The Gottland is owned in Sweden; there were no ventilators in this brig; I can't tell whether some of the cargo against the damage was sweated; I have not seen any sweated; I never carried a cargo of rice from the East Indies; I was at the wharf when they were discharging, whenever it was my business to be there. When they were discharging I had a man named Colburn, that I had for helping the mate, to look after it.

104 The weight of the cargo turned out short according to the bills of lading; contents were unknown to him. I know he is the owner from the ship's papers in the vessel.

Direct resumed: He is the correspondent, and employs me as master; I at Wisburg; he acts as owner of the vessel; I mean by correspondent he is the one who gives me orders; I have never heard of any other owner.

C. J. FAHRONS.

Sworn this 15th day of April, 1854, before me.

ROBERT W. ANDREWS,
Com'r of Deeds.

U. S. District Court.

105 LORENZO N. ENEQUIST
vs.
10,545 BAGS OF COFFEE.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Jorgen Munster, mate of the brig "Gottland," being examined through Louis Dalhstrom, an interpreter, says: I live in Arundul, in Norway; seafaring man; going way in the vessel; going to Charleston, thence to Europe; was mate in the brig Gottland from Batavia to Padang, thence to Batavia, and thence here; took the cargo on board partly in Padung, and partly in Batavia; the

106 cargo was stowed by the second mate, John Anderson; witness was present all the time taking in the cargo; the vessel was lined through with ratans, and mats on top of the ratans; that was the regular and proper way of stowing. The main hatch was not open during the voyage, because the long-boat and spars lay on it; the other hatches were open as often as the weather permitted; the cargo came out here the upper tier in bad order; bags were damaged by sweat of the vessel. Under the main hatch some of the bags in the second and third tier

107 was damaged with sweat. Some of the cassia also sweat; some few bags likewise by sweat—nothing else; we delivered all the cargo that we took on board at Batavia, &c., here; we could not do anything but what we did to prevent the sweat.

Cross-examined: We opened the hatches when we could, for the

purpose of airing the cargo and prevent sweating. We had a 98 days' passage, which we consider middling; the "Gottland" sails very well; we had no ventilators on board; we had some
108 wind-sails, which we used whenever we had the hatches up; we had two fore-hatches and one hatch aft, besides the main hatch; we had the hatches up about half the time.

JORGEN MUNSTER.

Sworn this 15th day of April, 1854, before me, through Louis Dahlstrom, interpreter.

ROB'T W. ANDREWS,
Comm'r of Deeds.

U. S. District Court, southern district of New York.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD et al.

We hereby consent that the following deposition of John H. Ankers be read in evidence on the trial hereof, by the respondents.
N. Y., March 5, 1857.

BEEBE & DONOHUE,
Proc. Lib'l't.
ROB'T DODGE,
Proc. Resp't.

109 *Direct Examination by Respondent's Counsel.*

John H. Ankers. Resides in this city; am ready *to* sea to-day, and expect to sail; am ship captain; have followed the sea thirty-one years; have been in the trade between Rio Janeiro and this port eleven voyages; have been in the East India trade; have made one voyage from California to China, then cruised around East India ports, Manilla, Singapore, Penung, Akyab, for a year. Have made one voyage from China to N. York, then another voyage from Manilla to New York; have brought tea, silks,
110 hemp and sugar from the East Indies, and have brought coffee, hides and rosewood; 26 years ago, when I was before the mast, I brought a cargo of black pepper from Bombay to England, and with this same cargo of black pepper I brought cotton, spices and coffee.

Q. On a voyage from Java or Sumatra to this port, starting from there the 3d of December, what winds would you meet, and what would be the heat of the atmosphere at sea; and if weather is uniform, what would it be?

A. After leaving straits of Funda, which is between the
111 two islands of Java and Sumatra, the wind would be from the east; the heat of the atmosphere at sea would be uniform, about 70°, and the weather generally fine, but subject to a

typhoon at any time of the year. The average run from there to the Cape of Good Hope is from 25 to 30 days in a fair sailing ship. The wind taken is the S. E. trade; that season is the summer there; off the Cape of Good Hope the atmosphere is a little colder at that time of year than in Indian ocean, and remains so till you get in the southeast trades again, which takes 4 or 5 days,
112 and when the vessel got off this coast it would be pretty cold weather. Black pepper absorbs and retains heat.

Q. With a cargo of coffee and black pepper and spices, brought from the East Indies at the season spoken of, how would you stow it? (Objected to.)

A. In the first place I should dunnage the vessel with ratans or firewood, and mats over that; then I would separate the cargo with mats or whatever I could get. I would take the coffee in first; if there was coffee enough to fill the lower hold, I
113 would put the rest between decks. If there was not coffee enough to fill the lower hold, I should put the coffee in the middle and the rest at each end. The dunnage is on bottom and sides; sometimes, though not always, we cover the top with mats, and also always mat the masts and stanchions in the hold. The object of putting mats on the top and on the masts and stanchions, is to collect the moisture or sweat, and it has that effect. I never examined my cargo whilst east of the Cape of Good Hope, nor opened my hatch, but have on the Rio voyage with coffee,
114 coming from there here, when just north of Bermuda. I did not use wind-sails in E. I. voyages; all the ventilation I used was to open the hatch in the fore-peak and the hatch in the cabin, occasionally—sometimes once every day for a week, and sometimes not for 3 or 4 days; not dependent on the weather. When I carried the black pepper I stowed it forward of the main hatch; there was no bulkhead in the hold, and the hatch in the fore-peak opened forward of it; the cabins were on deck. In E. I. ocean we have notice of a typhoon by fall of barometer,
115 sometimes 24 hours, sometimes 5 hours, and sometimes 2 hours before.

Q. Is it good stowage with such a cargo, at such a season, from E. I., to mix coffee, black pepper and spices together, or to place coffee over the pepper, without separation?

A. It is not.

Q. Is it customary so to do? (Obj'd to.)

A. It is not.

Q. Is it customary to stow such a cargo, and prepare the hold, and use the mats in the way you have testified?

A. Yes, sir.

Q. The pump-well runs down to the skin of the ship; the bilge-water collects between the timbers and underneath the skin;
116 part of it is pumped out daily; if it remains between the timbers, it will not increase sweat of the hold.

Q. With such a mixed cargo from the E. I., at the season I have stated, in a tight vessel without ventilation, or the care in stowage and mats you have spoken of, arriving here at the end of March, in what condition would such cargo be expected to be found on arrival? (Obj'd to.)

A. I should think it would be damaged.

J. ANKERS.

Cross-examination by libellant's counsel: The cargo I carried, pepper and coffee, from the East Indies, was on a vessel of
117 400 tons, English—an English Indiaman, two-decker; none of that cargo had sweat at all. If I had but a single-deck vessel, of course I could stow mostly between decks. If the cargo was furnished to me part at a time, I would stow as furnished; I would not leave holes in the stowage, but would stow it spread all over as it was furnished, part at a time; if part was stowed in one part first, it would be proper to stow that so as to be steady in its place, that the vessel might be sea-worthy; so
118 far as my knowledge, it is usual and customary to bring black pepper, coffee, India-rubber, spices of the produce of the country, including cinnamon, in the same cargo; the proper stowage is to receive the cargo as you get it, and stow it as it comes, properly. In the cargo as I brought from the East Indies, we had coffee and cotton in the lower hold and spices. It would be a good mode of ventilation to keep the hatches off in fair weather; the long-boat used to be stowed forward of the main hatch; now it is generally forward of the main hatch, sometimes on it. I had
119 mine on the main hatch coming home on the last voyage.

Re-direct examination: If a parter charters my vessel, and gives me black pepper to load at one port, and coffee at another, I require him to give me something to separate them, and if he does not I protest. After I had protested against it, I might put one on top of the other; I would not do it otherwise.

JOHN ANKERS.

Sworn before me, this 5th day of March, 1857.

[SEAL.] O. R. STEELE,
Notary Public.

(*Endorsed:*)

U. S. district court. Lorenzo M. Enequist vs. George B. Morewood, and al. Deposition of John H. Ankers, a witness
120 for respondents, credibly examined.

Examination of William G. Balley, Oct. 25, 1855.

My name is William George Balley; I reside in the city of New York; I know the claimants, Morewood and others—have been employed by them as delivery clerk since Sept., 1853; I know the barque Gottland; she arrived at this port (New York) March 24,

'54, from Batavia, island of Java; the cargo was consigned to G. B. Morewood & Co. She lay at pier No. 7, North river; her cargo consisted of coffee, cassia, pepper, mace, nutmegs, India-
121 rubber, and ratans; I was delivery clerk of Messrs. Morewood, and was sent down by them on that day to superintend the delivery; the captain, chief mate, and seamen, were in charge of the cargo; I told them what I was sent for; they said it was all right, and they were ready to begin; they opened hatches, and commenced working, discharging; they went on, and continued working from day to day till the whole cargo was discharged; we finished on the 8th of April.

Q. Had this cargo been previously sold to arrive by Mess.
122 Morewood?

(Counsel for libellant objects to the question.)

A. It was sold to be delivered on the wharf on arrival; I had a list of the names of the purchasers; I had their address; they were all in this city; Sturgis, Bement & Co., of this city, were the purchasers of the coffee. On referring to my book, to a memorandum made at the time by myself, I find the name of the purchaser of the cassia to be Rufus Story. On referring to my book as before, I find the name of the purchasers of the pepper to be Grimes & Huffer;
123 Sturgis, Bement & Co. had their sampler constantly on the wharf; their clerk was there occasionally; I saw this coffee lifted out of the vessel; it was in bags; I counted the bags; some of it was in very bad condition when it came out of the hold; some of it could not be lifted; some got as far as the deck, and had to remain there; it could not be landed; it could not be landed because the bags burst, and the contents were spilled; some of the coffee was very black, some not so black; some of it was damp;
124 it appeared to be wet from moisture that had collected; not wet from water; I should term it sweat; it appeared as if it had been almost in a steam. On referring to a memorandum made by myself at the time, I find 10,910 bags of coffee were invoiced.

(Counsel for libellant objects to the testimony as to how many bags were invoiced.)

Referring to a memorandum made by myself at the time, I find 8,171 bags of coffee were good; the damaged bags were emptied and put one side in the custody of the chief mate; the coffee
125 was separated in mat bags and gunny bags by the men in the ship; the bags were sent down by Mess. Morewood. On referring to a memorandum made by myself at the time, I find 2,352 new packages were made; the price of the sound coffee was 13¼ cents per pound.

Q. How much was the coffee bagged, as you have stated; the damaged coffee sold for, to whom sold, when, and where?

A. It was sold at 11½ cents per pound to Sturgis, Bement & Co.,

at the store of Geo. B. Morewood & Co. I cannot give the date of the sale exactly, but I should think it was within three weeks or a
126 month of the delivering of the sound coffee; all the coffee that was weighed on the wharf I saw weighed; the 2,352 new packages of coffee were made from 2,739 original packages of coffee; all the damaged coffee was not sold to Sturgis, Bement & Co.; some bags were sold at auction.

Q. Of those sold at auction, were they rejected by Sturgis, Bement, & Co.? (Obj'd to.)

A. Yes, the cassia was very much damaged when it first came out; the sound cassia was sold at 18 cents per pound; the damaged cassia was not sold (by itself, but the whole lot of cassia was
127 sold to the original purchaser, Mr. Story, at 16 cents per pound.)

Counsel for libellant objects to that part of the answer within brackets, referring to the damaged cassia.

There did not appear to be so much the matter with the pepper; it was in strong bags; I did not see the pepper itself; the bags were in good order when it first came out of the hold; I saw it sampled, but did not see the pepper; nothing was said to me about the freight of this cargo till after it was all discharged; immediately after the captain applied to Messrs. Morewood for the freight, and he
128 told me they refused to pay it, on account of the damage to the cargo.

Cross-examination: There was an entry-clerk in our store, who had charge of the entry of the goods at the custom-house—that was no part of my business; the entry-clerk was was Mr. Scott, Mr. Alexander Scott; I do not know anything about the permit, because I had nothing to do with it; there was a custom-house officer on board, and he had charge of the hatches; we could not work without his approbation; the vessel commenced discharging on the 31 March, some time in the forenoon to the best of my recollec-
129 tion; the whole cargo came to Mess. Morewood & Co.; the damaged coffee was weighed at their store; the cassia was not weighed there, nor the pepper; the ratans did not go to their store; neither did the India-rubber; I did not know when this suit was commenced, nor about any attachment of goods; the appearance of the damaged cassia was like that of the damaged coffee, as if from sweating; the matting was rotted, and the cassia was discolored, darkened.

Direct resumed: I did not see that damaged coffee weighed at the store.

(S'd) WILLIAM GEORGE BALLEY.

130 (*Endorsed:*)

U. S. district court. Enequist vs. Coffee. Morewood & al., cl'ts. Ex'n W. G. Balley, Oct. 25, 1855.

[Rec. cxxxii, D. T. 1859.]—5

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven: present, the Honorable Samuel R. Betts, district judge.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD et al. } 13. 291.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that the libellant recover in this action
131 against the respondents the sum of $9,160 $\frac{56}{100}$ with interest, the amount of the freight demanded with costs to be taxed, and that he have execution therefor, unless the respondents elect within 20 days to have an order of reference to a commissioner to ascertain the amount of freight by computation of the bills of lading and credits, if any are set up, or to prove a short delivery of cargo.

(Signed) SAM'L R. BETTS.

U. S. District Court.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD and others. } Beebe, Dean and Donohue. 13. 291. Robert Dodge.

Testimony on Reference.

132 1857, July 17.—The proctors for the respective parties being present, the libellant proceeds with the reference.

Lewis C. Dahlstrom, being sworn, says that he knows the brig Gothland; I recollect of her arriving here with a cargo of pepper, spices, &c., in March, 1854.

There was of coffee	623,795	pounds.
pepper	63,134	do.
cassia	34,222	do.
India-rubber	30,174	do.
nutmegs	1,253¼	do.
mace	1,206¾	do.

The freight on the same amounts to $9,160 56. The
133 interest from April 15, 1854, to July 15, 1857, amounts to $2,084 03.

On his cross-examination he says: That in 1854 he was cashier of Messrs. Funche & Meinches; they were the agents for the vessel; I saw the cargo on board the ship, but did not see it weighed; we received the weight of each article from Mr. Morewood; I know the cargo was delivered, and saw part of it delivered, but I cannot

say what part; I did not keep an account of the cargo as it was delivered; I did not see the upper tier of the cargo, and can-
134 not say what its condition was.

On further direct: Those weights were delivered to me by Mr. Morewood as the weight they had received.

Is the rate of freight, £4 16 0, for respective weights of this cargo, the East India Company's rates at the time of arrival or shipment?

He says he does not know; I had nothing to do with the weighing and delivering of this cargo; my duties as cashier did not include it.

C. DAHLSTROM.

Adjourned; the commissioner to have notice of the next meeting.

U. S. District Court.

LORENZO N. ENEQUIST
vs.
135 GEORGE B. MOREWOOD and others. } 13. 291.

It is hereby consented that the report made by Joseph Bridgham, esq., commissioner in the above case, stand as if regularly made by Geo. W. Morton, esq., the commissioner before whom the reference in said case was commenced, and all irregularity in the transfer of such reference from before Geo. W. Morton, esq., to Joseph Bridgham, esq., is hereby waived.

Dated Sept. 26th, 1857.

ROB'T DODGE, *Proc. Resp'ts.*

(*Endorsed:*)

13. 291. U. S. district court. Lorenzo N. Enequist vs. George B. Morewood and als. Consent.

ROB'T DODGE, *Resp'ts' Proctor.*

136 Filed Sept. 26, 1857.

District Court of the United States for the southern district of New York.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD et al. } Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause on the fourteenth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant
137 for freight money, and to report thereon to this court with all convenient speed—

I, Joseph Bridgham, the commissioner to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and respondent, and have taken and examined the testimony offered in support of the libellant's claim for freight money, and do find that there is due to the libellant for said freight money earned..... $9,160 56
Interest thereon for 3 y'rs, 5 months, and 12 days.. 2,212 00

$11,372 56

138 The sum of eleven thousand three hundred and seventy-two $\frac{56}{100}$ dollars.

Dated the 26th day of September, A. D. 1857.

All which is respectfully submitted.

JOSEPH BRIDGHAM,
U. S. Commissioner.

BEEBE, DEAN & DONOHUE,
Proctors for Libellants.

(*Endorsed:*)

Vol. 13, No. 291. United States district court for the southern district of New York. Lorenzo N. Enequist vs. George B. Morewood et al.

BEEBE, DEAN & DONOHUE,
Proctors for Libel't.

Commissioner's report.
Filed the 26th day of Sept'r, 1857.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall in the city of New York on Thursday, the first day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, district judge.

LORENZO N. ENEQUIST
vs.
GEORGE B. MOREWOOD, JOHN R. MOREWOOD, and Frederic R. Routh. } 13. 291.

139 On reading and filing the report of Joseph Bridgham, United States commissioner, to whom the above matter was referred, by which there is reported due the libellant for freight money the sum of eleven thousand three hundred and seventy-two $\frac{56}{100}$ dollars, on motion of Beebe, Dean & Dohohue, proctors for the libellant, it is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the respondents the amount reported due, together with his costs, to be taxed.

Filed and entered the first day of October, 1857.

District Court U. S., southern district N. Y.

LORENZO M. ENEQUIST
vs.
GEORGE B. MOREWOOD, JOHN R.
140 MOREWOOD, and FREDERIC R.
ROUTH.

GENT'N: The respondents intend to appeal from the final decree of the court in this cause.

Dated New York, October 1st, 1857.

ROB'T DODGE,
Proctor Resp'ts.

Messrs. BEEBE & DONOHUE,
Poctors Libellant.
GEO. F. BETTS, Esq.,
Clerk District Court.

(*Endorsed:*)

13. 291. Enequist vs. Morewood et als. Notice of Appeal.
GEO. F. BETTS, Esq.,
Cl'k Dist. Ct.

Filed 1st Oct., 1857.

Circuit Court of the United States, southern district of New York.

GEORGE B. MOREWOOD, JOHN R. MORE-
141 WOOD, and FREDERIC R. ROUTH, Appellants.
vs.
LORENZO M. ENEQUIST, Libellant and Appellee.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit:

The appeal of the above named appellants respectfully shows:

That on or about the 29th day of March, in the year 1856, the above named libellant, Lorenzo N. Enequist, exhibited his libel in the district court of the United States for the southern district of New York, against the appellants, claiming over fifty dol-
142 lars, exclusive of costs, in a case of admiralty and maritime jurisdiction, alleged that the libellant carried a certain cargo for the respondents, the said appellants, from Batavia to New York, and that said respondents became liable to pay the freight thereon, and prayed process, and that these appellants might be decreed to pay the demands of said libellants, and costs in said libel mentioned.

That process issued out of said court having been served on these appellants, they, the said Geerge B. Morewood, John R.
143 Morewood, and Frederic R. Routh, did, on or about the

19th day of April, in the year 1856, file their answer to said libel in said district court, alleging, amongst other things, that such cargo was shipped in good order and condition, and by the acts and negligence of said libellant, the carrier, said cargo was greatly damaged, and praying that said decree would decree against the libel aforesaid, and condemn the libellant in costs, as by reference to said libel and answer may more fully appear.

144 That the said cause came on to be heard before the Honorable Samuel R. Betts, judge of the said district court, on or about the 30th day of June and the 1st and 2d days of July, 1857, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and the said judge having advised thereon, on the 14th day of July, in the said year 1857, made a decree or sentence in said cause, whereby it was decreed that the libellant recover in said action against

145 these appellants the sum of ($9,160 56) nine thousand one hundred and sixty dollars and fifty-six cents, with interest on the amount of the freight demanded, with costs, to be taxed, and that he have execution therefor, unless the respondents, these appellants, elect within twenty days to have an order of reference to a commissioner to ascertain the amount of freight by computation of the bills of lading and credits if they are set up, or to prove a short delivery of cargo, as by reference to said decree will more fully appear; under which decree a reference was had to

146 Joseph Bridgham, U. S. commissioner, substituted by consent for G. W. Morton, esq., to whom the same was originally referred, who reported that there was due to Lorenzo N. Enequist, libellant aforesaid, and appellee, the sum of eleven thousand three hundred and seventy-two dollars and fifty-six cents; which report, on the 26th day of September, 1857, was confirmed by the said court, and a final decree was on the 1st day of October, 1857, rendered by said court for the libellant for the sum of

147 $11,372 56, being his said demand, with costs to be taxed.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of Lorenzo N. Enequist to the next circuit court, to be held in the said district, and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court,

148 and other proofs to be introduced in the said circuit court, and seek a new decision on the facts, and they pray that the said decree, and every part thereof, may be reversed with costs, or such other decrees thereupon made as to the said circuit court shall seem just, and that the said appellee be condemned to pay to these appellants their costs and damages in the premises; and they pray that the record and proceedings may be returned to the said circuit court.

ROB'T DODGE,
Proctor Appellants.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss.

149 Patrick Charles O'Connor, of said city and district, being duly sworn, saith, that on the first day of October, 1857, he served a copy of the foregoing appeal on Beebe & Donohue, esqs., proctors of the appellee in the district court herein, by delivering the same to a clerk in charge of their office, in said city, during office hours on that day, in their absence therefrom.

P. C. O'CONNOR.

Sworn before me this first day of October, 1857.

CHAS. W. NEWTON,
U. S. Com'r.

(*Endorsed:*)

150 13. 291. Circuit Court U. S. southern district N. Y., 2d circuit. George B. Morewood, John R. Morewood, and Frederic R. Routh, appellants, vs. Lorenzo N. Enequist, appellee. Appeal.

ROBT. DODGE,
Proctor App'lts.

Filed 2d Oct., 1857.

GEO. F. BETTS, Esq.,
Cl'k U. S. District C't.

Circuit Court of the United States of America for the southern district of New York, in the second circuit.

LORENZO N. ENEQUIST, Libellant and Appellee,
vs.
GEORGE B. MOREWOOD, JOHN R. MOREWOOD, and Frederic R. Routh, Resp'dts and Appellants.
} Bond for costs.

151 Know all men by these presents, that we, Marshall Lefferts and Thomas B. Coddington, and Frederic R. Routh, are held and firmly bound unto the above named libellant in the sum of twelve thousand dollars, to be paid to the said libellant, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the fifth day of October, in the year of our

152 Lord one thousand eight hundred and fifty-seven.

Whereas the above named respondents have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district

court of the United States for the southern district of New York: Now, therefore, the condition of this obligation is such, that if the above named respondents and appellants shall prosecute their appeal to effect, and answer all damages and costs if they
153 fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

FREDERIC R. ROUTH. [L. S.]
MARSHALL LEFFERTS. [L. S.]
T. B. CODDINGTON. [L. S.]

Sealed and delivered, and taken and acknowledged, this fifth day of October, 1857, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Marshall Lefferts and Thomas B. Coddington, being duly sworn, depose and say, and each for himself saith, that he resides in the city of New York, and that he is worth the sum of twenty-four thousand dollars over and above all his just debts and liabilities.

MARSHALL LEFFERTS,
T. B. CODDINGTON.

Sworn to this fifth day of October, A. D. 1857, before me.

JOSEPH BRIDGHAM,
U. S. Com'r.

The sufficiency of the sureties to the within bond ap-
154 proved.

SAM. R. BETTS.

N. Y., Oct. 5, 1857.

(*Endorsed:*)

Vol. 13, page 419. U. S. Circuit Court. Lorenzo N. Enequist, lib'lt and appellee, vs. George B. Morewood and o'rs, resp'ts and appellants. Bond for costs on appeal.

ROBT. DODGE,
Appellants' Proctor.

Filed this 5th day of Oct'r, 1857.

The President of the United States of America to Charles J. Jones, Esquire, solicitor, of London, in Great Britain, greeting:

[L. S.]

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority diligently to examine, upon his cor-

poral oath or affirmation, before you to be taken, and upon the interrogatories hereunto annexed, William George Balley, of London aforesaid, as a witness on the part of the appellants, in a certain cause now pending undetermined in the circuit court of the United States of America for the southern district of New York, on appeal wherein George B. Moorewood, John R. Moorewood, and Frederic R. Routh are respondents, appellants, and Lorenzo N. Enequist is libellant, appellee.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal directed to the clerk of the circuit court of the United States for the southern district of New York, at the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same, when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of New York, this twenty-second day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States for the Southern District of New York.

ROBT. DODGE,
Proctor App'ts, 54 *Wall st., N. Y.*

Circuit Court of the United States for the southern district of New York.

GEORGE B. MOOREWOOD, JOHN R. MOOREWOOD, and Frederic R. Routh, Appellants,
vs.
LORENZO N. ENEQUIST, Appellee.

Settled subject to all legal objections.

BEEBE, DEAN & DONOHUE,
Proc. Appellees.

Interrogatories to be administered to William George Balley, of the city of London, in the Kingdom of Great Britain, a witness to be produced, sworn, and examined, in a certain cause of admiralty and maritime jurisdiction now pending in the circuit court of the United States for the southern district of New York, on ap-
155 peal between the above named parties on behalf of the appellants, before the commissioner in the writ hereto annexed named.

First interrogatory. What is your name, age, place of residence, and business? Do you know the parties in this cause?

Second interrogatory. In the year 1854 where did you reside, and what was your employment; and how long had you been in that employment, and what was its nature and duties?

Third interrogatory. Do you know of the arrival of the barque Gottland at the port of New York in 1854? When did she so arrive? When did you first see her? Where did she lay? Whence did she
156 come? What cargo did she bring? To whom was the cargo consigned? Did you see her before her hatches were opened? How many hatches had she? Where were they situated? What cabins and where—above or below deck? How were her hatches fastened down? Were they all so fastened? Was she dry and tight, or otherwise? Did you see the hatches opened? What hatches were opened, how was it done, and how long a time was occupied in opening the hatches? What was stowed over the main hatch? If you answer the boat, how was the keel of the boat
157 fastened to the deck? What space was there left between the keel of the boat and the hatch? Could the main hatch be moved off without lifting off the boat? Under which hatch was the coffee stowed? Where was the coffee stowed? Where was the black pepper stowed? Where was the cassia stowed, and where was the India-rubber? State fully and particularly.

Fourth interrogatory. When the hatches were opened did you see any covering either of mats, hides, or tarpaulins, on the top of the cargo? Did you see any such covering on the beams or
158 stanchions of the hold? Was the cargo then dry, or damp and heated? Did any, and what, vapor or steam arise? Was it rotted, and to what extent of each portion of the cargo? What was the appearance, color, and consistency of the cargo and the sweat? Did you see any sweat about the hatch, hold or cargo, and to what extent? Describe fully what you saw. How close to the roof of the hold was the cargo stowed? Was any space left for the passage of air through the cargo?

Fifth interrogatory. Where were you during the dis-
159 charge of this cargo? Did you go on board of this vessel during that time, and how often? Did you go down into the hold? Did you see the whole of the cargo? How far aft and how far forward in the vessel was the cargo stowed? What bulkhead, and where, was there in this hold? Was there any bulkhead whatever? What shored up the cargo forward and aft? Was not this cargo stowed promiscuously together in one entire mass? Was there any separation between the black pepper and the rest of the cargo? Was the black pepper stowed in with, amongst,
160 upon, or under the coffee? What bags or covering on the coffee, cassia, and rubber? Was this cargo stowed tight together in a mass up to the roof of the hold?

Sixth interrogatory. Did you see this cargo all discharged? From which hatch was it brought out? Where was the black pepper discharged from? Was the coffee discharged from the same hatch? Was the discharge of the coffee delayed or not to allow of the discharge of the black pepper; and if so, when and how
161 long? Were the bags of black pepper mixed in with the coffee under and around the main hatch? What was the condition of the cargo on its discharge? What was the condition of the black pepper, cassia, and India-rubber, respectively, on their discharge? How many bags, pockets, bundles, or baskets, of each were damaged—by what cause, and to what extent? Was the coffee sold, and at what deduction, from full price; and what was then the market price in New York of sound coffee, and what of cassia, and black pepper; and how much were
162 they sold for, and at what deduction? How much loss was there altogether on these items of the cargo? State the same fully and specifically. Were they delivered to the purchaser by you? Did any of the coffee get loose from the bags? How and why? Did any of the pepper also get loose? Did you see this loose coffee? Where was it, and how much? Was it re-bagged, and where, and by whom? Did you examine it then when loose, or when re-bagged? Did you or not see any, and if so how much black pepper in this loose coffee, or when or after it was re-bagged?

163 Seventh interrogatory. Did you meet the captain and mate, John Anderson, on board; did you converse with them as to the cause of the damage; what did they say was the cause; and what did they say as to ventilation and as to the destruction of a rice cargo on a previous voyage in the same vessel, and how it occurred?

Lastly. Do you know of any other matter or thing in any way material to the appellants' suit herein and not before interrogated or answered? If so, please state the same fully.

ROB'T DODGE,
Proc. App'ts.

U. S. Circuit Court.

Cross-interrogatories to be administered to Wm. G. Bailey, a witness to be examined in this cause, before C. J. Jones, Esq., Commissioner, London.

Settled, subject to all legal objections.

ROB'T DODGE,
Proc. App'ts.

LORENZO N. ENEQUIST,
Resp'd't,
164 vs.
GEORGE B. MOOREWOOD and al.,
Appellants.

First cross-interrogatory. Have you ever been attached to any vessel or vessels in any capacity; if yea, in what capacity, and what was the vessel or vessels' name or names, and on what voyage; what was your duty in receiving the cargo of the vessel you refer to; did you not stay on the wharf, and were you not,
165 while so receiving it, on the wharf and paying attention to the cargo there; did you take any memorandum or count of the vessels' hatches; if yea, why did you so count; do you of your own knowledge remember the dates you give in your direct examination? State particularly each one you remember; state whether or not the dates have not been given to you to be examined by, and by whom were they so sent or given to you; and if they were not sent from , where did you get them; did
166 you pay any attention, in fact, to said vessel before the cargo was ready for delivery? State particularly all the means of knowledge you had of the facts testified to on the direct . Now, do you know the name of the vessel to which you refer; from whom do you now get it; in whose employ are you now; what day of the week and day of the month and time of day were the hatches opened when you saw them; did you stand by while they were opened; did you or not assist in opening them; who
167 did open them; did you help or assist in discharging the vessel; were you not examined as a witness in this case before, or in a controversy about this same freight, in which Messrs. Moorewood & Co. were claimants of the goods; did you not then say that you knew nothing of the stowage of the goods, but was employed on the dock; did you not at that time tell all you knew on the subject?

Second cross-interrogatory. If you answer that you were present when the hatches were opened, then say whether or not the
168 whole loss of the cargo that you saw was not rotted and black, including whatever matting or covering was on the goods?

Third. If you undertake to state the particulars in regard to the price at which the goods sold, state particularly whether you made the sale, to whom and for what each portion was sold; state fully the particulars; give us the names to whom sold and the date of sale, and the particulars of the goods sold. Was not entries made in the books of Moorewood & Co.; were you the clerk who made
169 the sales; were you present when the sales, or any, and which of them, was made; who made and to whom were they made, and where? State fully as to each lot and each kind of goods.

Fourth cross-interrogatory. Do you know any other matter, cause, or thing whatever or necessary to the respondent in this ac-

tion? If yea, state the same as fully and particularly as if interrogated thereto.

BEEBE & DONOHUE,
Proctors for Resp't.

The People of the State of New York, to :

Know ye, that we, with full faith in your prudence and competency, have appointed you commissioner , and by these presents do authorize you to examine as witness in a cause pending in the defendant on the part of the on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witness and return the same according to the directions hereunto annexed.

Witness the day of , one thousand eight hundred and .

Direction for Executing the Commission.

The persons to whom such commission shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows:

1. They, or any one of them, shall publicly administer an oath to the witnesses named in the commission, that the answer given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him and certified by such of the commissioners as are present at the taking of the same.

3. If any exhibits are produced and proved before them they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same, and shall be certified by the commissioners.

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them; they shall annex all the depositions and exhibits of the commission, upon which their return shall be endorsed; and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, or to the clerk of the county in which the venue shall be laid, as shall have been directed on the commission, at his place of residence.

5. If there is a direction on the commission to return the same by mail, they shall immediately deposit the packet, so directed, in the nearest post-office.

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to such agent.

The above is an extract from the revised statutes of the State of

New York, (4th ed.) vol. 2, page 639, relating to the taking of testimony out of the State.

This commission, when executed, is to be returned .

The execution of this commission appears in certain schedules hereunto annexed.

, *Commissioner.*

Instructions to Commissioners.

Annexed to the commission is an extract from the Statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample instructions:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by , the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth, so help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form:

"You do swear in the presence of the ever living God," and while so swearing he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form:

"You do solemnly, sincerely, and truly declare and affirm," omitting the words, "so help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

Deposition of witnesses, produced, sworn (or affirmed) and examined, the day of , in the year one thousand eight hundred and , at , under and by virtue of a commission issued out of the in a certain cause therein depending, and at issue between defendant as follows:

A. B., of (insert his place of residence and occupation) aged

years and upwards, being duly and publicly sworn, or affirmed, pursuant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows:

First. To the first interrogatory he saith, &c. [Insert the witness's answer.]

Second. To the second interrogatory he saith, &c.; and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory he saith, &c., and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of , 18 , before—

, *Commissioner.*

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners, in this manner:

At the execution of a commission for the examination of witnesses between defendant this paper writing was produced and shown to (insert the witness's name,) and by him deposed unto, at the time of his examination, before—

, *Commissioner.*

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of , 18 , before—

, *Commissioner.*

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

, *Commissioner.*"

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

To Kenneth G. White, esquire, the clerk of the circuit court of the United States, at the city of New York.

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court by one of the acting commissioners personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath before one of the judges or the clerk of the court—

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post office, he making the following endorsement thereon:

"Deposited in the post office, at , this day of , 18 , by me—

, *Commissioner.*"

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter bag of the , now lying at , and bound for the port of New York, this day of , 18 , by me—

, *Commissioner.*"

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon Rob't Dodge, 54 Wall street, New York, who will direct him as to its delivery.

(*Endorsed:*)

Circuit court U. S., southern dist. N. Y. George B. Moorewood and al., appellants, vs. Lorenzo N. Enequist, appellee. Commission. Rob't Dodge, proc. appellants. To Charles J. Jones, esq., commissioner, No. 19, Spital square, London.

The execution of this commission appears in certain schedules hereunto annexed.

C. J. JONES, *Commissioner.*

Deposition of William George Balley, a witness, produced, sworn, and examined the fifth day of January, in the year one thousand eight hundred and fifty-eight, at the house known as No. 75, Charles street, Goswell road, in the county of Middlesex, in Great Britain, under and by virtue of a commission issued out of the circuit court of the United States of America for the southern district of New York, in a certain cause therein depending, and at issue on appeal between George B. Moorewood, John R. Moorewood, and Frederic R. Routh, respondents, appellants, and Lorenzo N. Enequist, libellant, appellee, as follows:

171 William George Bally, of No. 75, Charles street, Goswell road, London, in the county of Middlesex, out of business, aged sixty two years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the appellants, doth depose and say, viz:

First. To the first interrogatory he saith, that his name is William George Balley; he is sixty-two years of and upwards; he resides at No. 75 Charles street aforesaid, and is out of business; he knows the appellants in this cause, but he knows not the appellee.

172 Second. To the second interrogatory he saith, that in the year one thousand eight hundred and fifty-four he resided in New York; that he was then delivery clerk to the said appellants, and had been in that employment

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from the month of September, one thousand eight hundred and fifty-three, and that the nature and duties of such employment was to superintend the delivery of goods to the different purchasers of them.

Third. To the third interrogatory he saith, that he knew of the arrival of the barque Gottland at the port of New York in one thousand eight hundred and fifty-four; that her arrival was reported to the said appellants on the 24th day of March, one thousand eight hundred and fifty-four; that he first saw her on

173 the thirty-first day of the said month; that she lay at pier No. 7, North river; that she came from Batavia, in the island of Java; that she brought a cargo of coffee, black pepper, nutmegs, mace, cassia, India-rubber, and ratans; that the cargo

was consigned to the said appellants; that he did not see her before the main hatch was opened, the same being opened when he first went on board, but the fore-and-aft hatches were not open when he first went on board; that she had three hatches; that they were situated in the aft of the vessel, the middle of the ves-
174 sel, between the masts and the fore part of the vessel; that the only cabin he knows of, and the only one he was in, was the captain's, in the aft part of the vessel, below deck; that the hatches were fastened with bars and locks; they were also fastened under the lock of the custom-house officers;

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that the vessel was quite dry and tight; that he saw the hatches opened from time to time, all of them; they were opened by the custom-house officers unlocking the bars, and men in the
175 vessel lifting off the hatches; that opening the hatch took about five minutes, to the best of his recollection; that he cannot tell what was stowed over the main hatch, as that hatch had been opened before he saw it; that the cargo was stowed under the three hatches; that the black pepper, nutmegs, and mace were stowed under the aft hatch; the India-rubber and cassia under the fore-hatch; and the coffee was stowed in the remaining space between the aft hatch and the fore-hatch, and in the upper part of the fore-hatch, coming to the top of the main hatch and the
176 top of the fore-hatch above the India-rubber and cassia, but the black pepper came up to the top of the aft hatch; the coffee was stowed close up to the black pepper, but not on or under the black pepper.

Fourth. To the fourth interrogatory he saith, that he did not see any covering, either of mats, hides, or tarpauling, or other covering on the top of the cargo; that he did not see any such covering on the beams or stanchions of the hold; that the cargo
177 was considerably heated, and very damp; that he did not observe any vapors or steam; that the bags of a very large portion of the coffee *was* rotted, and some of the matting covering the cassia was rotted, but not the covering of the other articles; the bags of a

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large portion of coffee were so rotten that they could not be lifted out of the hold with the coffee in them; some reached the deck, but were incapable of being landed in consequence of being rotten; the bags appeared to have become dark or discolored as from steam or sweat, and also the coffee was discolored and damaged;
178 the bags were given to the chief mate, and the coffee had to be re-bagged in other bags; that he did not see any sweat about the hatch or cargo as a dripping sweat, but as a rottenness.

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The cargo was stowed up to the top of the hatch-hole quite flush up to the deck, and there was no space whatever left for ventilation through the cargo.

Fifth. To the fifth interrogatory he saith, that he was principally on the wharf during the discharge of the cargo, but he went
179 occasionally on board the vessel; that he went every day, and sometimes once or twice, or oftener, in the day; that he went into the hold several times and saw the whole cargo; it was stowed from one end of the vessel to the other; that he does not remember any bulkhead in the hold, and to the best of his belief there was none; the cargo was shored up forward and aft by being all stowed together; that the cargo was not stowed promiscuously; the coffee was stowed close up to the black pepper, but the
180 black pepper was stowed by itself up to the roof of the aft hatch; that the black pepper was not stowed amongst, upon, or under the coffee; that the coffee was stowed in bags, the cassia in matting, and the India-rubber in baskets;

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that the whole cargo was stowed tight together in a mass up to the roof of the hold.

Sixth. To the sixth interrogatory he saith, that he saw the cargo all discharged; the whole of the coffee was brought out of the main hatch; the India-rubber and cassia from the fore hatch, and the black pepper, nutmegs and mace from the aft hatch;
181 the coffee was not discharged from the same hatch as the black pepper. The discharge of the coffee was not delayed to allow of the discharge of the black pepper, except on account of the men's being engaged in the discharge of the pepper; that the bags of black pepper were not mixed in with the coffee under and around the main hatch. On the discharge of the coffee a large portion of the coffee was in bad condition; the bags of the black pepper were sound and not broken; part of the cassia
182 was in bad condition, and the India-rubber was in good condition; that the coffee invoiced was ten thousand nine hundred and ten bags; that eight thousand one hundred and seventy-one bags of the coffee were received by Messieurs Sturgis, Bennet & Co., who were the purchasers from the appellants, but they rejected two thousand seven hundred and thirty-nine bags as being damaged; that the damaged coffee was re-packed in meal and gunny bags by the men in the ship, and made into two thousand three hundred and fifty-two bags; that the cassia was all more or less damaged, some slightly and some a great deal;

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that the damage to the coffee and cassia was caused by the
183 ship's sweat and want of ventilation to the best of his belief; that the coffee was sold; the price of the sound coffee was thirteen

cents and a quarter per pound, and the damaged coffee eleven cents and a half per pound, except a portion very much damaged which had been stowed around the mainmast, and which was damaged by water as well as heat, and was quite a muck; he believes that thirteen cents and a quarter per pound was then the market price in New York of sound coffee, from the fact that the sound
184 coffee sold to Messieurs Sturgis, Bennet & Co. was of a superior quality; that the market price of sound cassia in New York was then, he believes, eighteen cents per pound, and of pepper nine cents and a quarter per pound, the cassia and pepper having been agreed to be sold at those prices; that the cassia was sold, on account of its being damaged, at sixteen cents per pound, and that one hundred and one bags of the black pepper were rejected as being damaged by Lewis Huffer & Co., who had purchased the whole at nine cents and a quarter per pound, and
185 the one hundred and one bags of damaged pepper was afterwards sold to Rufus Story at nine cents per pound; that he does not know the weights of the coffee, cassia and pepper, and therefore that he cannot say how much loss there was altogether; that he only knows the number of packages;

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that the cargo was delivered by him to the purchasers, except the damaged coffee, which was removed to the appellants' store; that a great quantity of the coffee got loose from the bags being rotten, but not the pepper; that he saw the loose coffee; there was a large proportion, some in the hold and some on the deck; the
186 quantity was two thousand seven hundred and thirty-nine bags, which was re-bagged, some in the hold and some on the deck, in two thousand three hundred and fifty-two bags; it was re-bagged by the men appointed to discharge the cargo; that he saw it when loose and while it was being re-bagged; that he examined the loose coffee, and that it was very much damaged; that he also saw the cassia, which was very much discolored; that he did not see any loose pepper in the loose coffee.

Seventh. To the seventh interrogatory he saith, that he met the captain and mate on board; that he conversed with the cap-
187 tain as to the cause of the damage; that the captain said he considered his ship was tight and seaworthy, and was at a loss to account for the damage; that immediately after the captain had applied to the appellants for the freight, the captain told him they refused to pay the freight on account of the damage to the cargo; that he does not remember having any conversation with the mate as to the cause of the damage, nor the captain or mate saying anything as to the destruction of a rice cargo on a previous voyage in the same vessel, or how it occurred.

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Eighth. To the eighth interrogatory he saith that he
188 knoweth not.

First. To the first cross-interrogatory, he saith: that he has never been attached to any vessel in any capacity; that his duty in receiving the cargo in question was to deliver it to the purchasers; that he did stay on the wharf, and was on the wharf while receiving the cargo, and paying attention to it there, except occasionally going on board the vessel; that he did not take any memorandum or count of the vessel's hatches, but he remembers the hatches;

that he does remember the dates he has given in his direct
189 examination; that the vessel was reported to the appellants on the twenty-fourth March, one thousand eight hundred and fifty-four; that he first saw her on the thirty-first of the same month, and that the cargo was being discharged up to the eighth April, inclusive; that the dates have not been given to him to be examined by; that he gets them from his own recollection, and of which he made memorandums at the time;

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that he did not pay any attention in fact to the vessel before the cargo was ready for delivery; that his means of knowledge
190 of the facts testified to on the direct, were his superintending the discharge of the cargo, and being personally present; that he remembers the name of the vessel; that he is now out of business and not in the employment of any one; that the hatches

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were opened every day except Sunday, from the thirty-first day of March, to Saturday, the eighth April, and were generally open from about nine o'clock in the forenoon, until about five or six o'clock in the afternoon; that he stood by occasionally when the hatches were opened, but not as part of his duty; that he
191 did not assist in opening them; the hatches were lifted by the men employed on the ship after the custom-house officer had unlocked them; that he did not help or assist in discharging the vessel; that he was examined in this case before; that he did not then or on any other occasion say that he knew nothing of the stowage of the goods; that he then answered all the questions put to him, but which were not so full and particular as the questions now put to him, and therefore he may not then have
192 told all he knew on the subject, so fully and particularly as he has now done.

Second. To the second cross-interrogatory, he saith: that a portion of the cargo that he saw was rotted and black, including the bags and matting of the coffee and cassia.

Third. To the third cross-interrogatory, he saith: that he did not make the sales, but he was cognizant of them. The coffee, except the portion sold by auction, was sold to Messieurs Sturges,

Bennet & Co.—eight thousand one hundred and seventy-one bags of sound coffee at thirteen cents and a quarter per pound, and

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193 two thousand seven hundred and thirty-nine bags of damaged coffee at eleven cents and a half per pound; that the sound pepper was sold to Lewis Huffer & Co., at nine cents and a quarter per pound, and the damaged pepper was sold to Rufus Story at nine cents per pound, and the cassia was originally sold to Rufus Story at eighteen cents per pound, and they having first rejected them, afterwards re-bought them at sixteen cents per pound for the whole lot; he does not know to whom or for what the coffee sold by auction was sold; the coffee was sold by Messieurs Sturges, Bennett & Co., within a month after the

194 ship's discharge, to the best of his recollection; the damaged pepper and the cassia were sold within the days of delivery, on the wharf; that entries were made in the books of the appellants; that he was not the clerk who made the sales, and was not present when they were made; that the damaged coffee was sold by a broker, whose name he has forgotten; that he does not remember whether the pepper was sold by Mr. Morewood or a broker, but his impression is, that it was sold by Mr. Morewood; that the cassia was sold by Mr. Morewood; the pepper and cassia was

195 sold on the wharf, and the damaged coffee at the appellants' store; that he knows of the sales of the pepper and cassia, by his delivering them to the purchasers; and of the coffee, by the purchasers fetching it, and the particulars of the sales by the papers

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relating to the sales, and also from verbal communications with the purchasers at the time.

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Fourth. To the fourth cross-interrogatory, he saith that he knoweth not.

W. G. BALLEY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this fifth day of January, 1858, before—

196 (Signed) C. J. JONES,
Commissioner.

(*Endorsed:*)

Circuit court U. S., southern district N. Y. George B. Morewood & al., appellants, vs. Lorenzo N. Enequist, appellee. Depositions.

Opened by order of court, 6th day of May, 1858.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this 21st day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affida-
197 vits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me,
198 at my office at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Charles H. Brown, as a witness to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein George B. Moore*head* et al. are appellants and Lorenzo N. Enequist is appellee.

And the said Charles H. Brown, being about the age of
199 thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Charles H. Brown, and he did thereupon depose, testify, and say as follows, viz:

I reside in the city of Boston, and am a mariner, and am about to go to sea. I have been a mariner seventeen years, and an officer and captain seven years. I have been officer ten years and master six years. I have been in the East India trade ever since I have been to sea, about seventeen years. I have brought Cal-
200 cutta, China, and Singapore cargoes. These cargoes have consisted of linseed, saltpetre, pepper, coffee, sugar, and teas, gunny bags, and spices. I have made voyages from Calcutta to Boston, and from China to New York, and Singapore to New York.

Q. What is an assorted cargo, so called, in that trade?

A. Articles which I have mentioned.

Q. Are you familiar with the stowages and treatment of such cargoes on such voyages?

A. Yes, sir.

Q. If you had a remarkably tight and dry vessel, a brig of about 250 tons, without any ventilators built in her, and with a clear hold and single deck, cabins on deck, at Batavia
201 or Padang, in the month of Dec'r, in any year, to load with a cargo of about eleven thousand pockets or grass mat bags of coffee, with about 600 bags of black pepper, and 600 bundles of cassia, with 40 casks of mace and nutmegs, and ratans for dunnage, how would you stow it?

A. I would stow the coffee in the bulk of the vessel, midships, the pepper forward in peak, and the mace, nutmegs, and cassia abaft.

Q. Would you separate any portion of that cargo; and if so, what?

202. A. The pepper from the coffee by the ratans. I should consider there would be no occasion to separate the nutmegs and coffee, but the cassia I would stow on top of the nutmegs and mace.

Q. What would be the effect of matting the top of such cargo or the roof-beams and stanchions of the hold, or either of them, particularly around the hatchways, as regards sweat damage to her cargo?

A. The matting in the hatchways might be so placed as to prevent sweat damage there, but I should not consider it possible to cover the whole cargo and protect it from much sweat.

Q. Would such matting, judiciously placed, absorb moist-
203 ure and protect cargo from damage from sweat?

A. If it could be placed in a continuous line leading to the sides, it might.

Q. To what extent would it protect it?

A. If placed in a continuous line leading to the sides it would protect it fully; that is, if they were good mattings.

Q. If a bulkhead reaching down from the roof of the hold six feet were placed in the hold of such a brig as I have men-
204 tioned in my previous question, at a point or distance about twenty feet abaft of the main hatch, and the cargo stowed on either side of it tight up to the roof of the hold, having no air space, what would be the effect on the heat of the hold of such brig or ventilation of such a cargo in the brig and in the production of sweat damage?

Objected to by Mr. Donohue, counsel for appellees.

A. The bulkhead would prevent any circulation of air, even if there had been ventilators.

Q. Could a draught of air go through such a cargo so
205 stowed as stated above, or the heated air escape?

A. No, sir.

Q. Could there be any effectual ventilation of such *hole* or cargo of such a brig in such circumstances as I have stated in the previous question?

A. This state of the case, supposing there was no ventilators, I should say no.

Q. How would it be as to ventilation and heat with such a cargo and such a brig without bulkheads?

A. The confined air would still be there. That is as full an answer as I can make.

206 Q. Without that bulkhead, with such cargo in such brig, stowed as before described, with opened hatches, what would be the effect as to ventilation and heat of hold and cargo?

A. It would let the heated air escape.

Q. Could such cargo in such brig, then, without that bulkhead, and with opened hatches, be effectually ventilated so as to prevent sweat damage to cargo?

A. I should say it would let the heated air escape.

Q. Could this cargo be effectually ventilated with no bulkhead, by having the hatches opened on the voyage?

A. Yes, sir.

207 Q. Have you met with sweat of the hold?

A. Yes, sir.

Q. What is its cause and nature?

A. Condensation of heated moist air.

Q. Does heated air rise in the hold?

A. Yes, sir.

Q. Is sweat of the hold the natural result from well-known causes, and what are those causes?

A. It is the result of well known causes; those causes are the heated damp air running from some parts of the cargo.

Q. What produces this heated and damp air?

A. The heating properties of some of the cargo.

208 Q. If a cargo in that trade is effectually ventilated will there be any sweat damage to it?

A. No, sir.

Q. In what state of hold and cargo does sweat damage occur, and will it occur without such state and condition of hold and cargo?

A. Sweat damage occurs when the air in the hold is warmer than the air surrounding the vessel, and it will not occur unless the air in hold is warmer than the air surrounding the vessel.

Q. What is the nature of black pepper as cargo; is it or not of a heating nature?

A. Yes, sir, it is.

209 Q. Would such cargo, stowed as before described, be or not peculiarly liable to injury from heat of the hold and sweat damage?

A. Yes; coffee is a delicate article.

Q. What will prevent sweat damage to such cargo?

A. Effectual ventilation.

Q. What means do you yourself adopt to prevent such sweat damage with such cargoes in your own practice?

A. Giving the cargo as much air as possible by opening booby hatches and all ventilators.

Q. If such a brig had five hatches, one hatch of which
210 went into the cabin and had a house over it, how many of her hatches, and which, would cover cargo?

A. Without knowing the construction of the vessel I should think three.

Q. If these hatches were all battened, tarpaulined, and nailed down at the start of her voyage in such a brig, is it practicable or usual to unfasten any of them on the voyage from the East Indies to this country and lift or slide them off?

A. Yes, sir, in fair weather.

Q. Do you mean by that, that you would do it yourself?

Obj'd to by appellee.

A. Yes, sir.

211 Q. Is it usual in such a brig?

A. Yes, sir, in fine weather.

Q. Would it be proper care in this cargo to keep fastened down all the hatches on such voyage that communicated with or covered the cargo?

A. I should think not in fair weather.

Q. In the Indian ocean or east of the Cape of Good Hope, before reaching the Atlantic or a colder latitude on a voyage from Batavia, island of Java, here, starting thence in Dec'r, with constant fine weather on the voyage, is it difficult or dangerous to open your hatches?

A. No, sir.

212 Q. With such a bulkhead in the hold, placed as before described, with one or more hatches opened fore and aft of that bulkhead, could a draught of air go through that cargo, or the heated air escape?

A. The draught of air could not go through, but some of the heated air would escape.

Q. Could that cargo be then effectually ventilated under such circumstances described.

A. No, sir.

Q. If wind-sails were employed in the opened hatches with such a bulkhead placed as before described, what would be their effect?

A. It would partially ventilate the hold, but would not
213 make a current of air through the hold or cargo with a light bulkhead.

Q. Without a current of air passed through the hold or cargo can sweat damage to cargo be prevented?

A. No, sir.

Q. Will it be the natural result?

A. Yes.

Q. If such cargo, in such brig, for such voyage, was stowed as I now describe, namely, no cargo whatever in the peak, the 11,000 pockets of coffee midships, extending 20 feet forward of the main hatch and about twenty feet abaft the main hatch, up
214 against the six-foot bulkhead, coming down from the roof above described, behind and abaft this bulkhead, the 600 bags of black pepper lying on top of 600 bundles of cassia, and also the mace and nutmegs, with the hatches nailed, battened, and tarpaulined down without matting on top of the cargo, or on the roof-beams, stanchions or hatchways of the hold, without using wind-sails, with constant fine weather in the warm climates, and up to within two days of her arrival at this port, on a voyage starting from Batavia the first week of Dec'r, and arriving
215 here the last week in March, what would be the probable heat of such hold and cargo in the warm climates?

A. Over one hundred, I should think, certainly; in warm climates on such voyage the temperature of the air is about ninety.

Q. In passing from a warm climate to a cold one under such circumstances, what would be the effect on such cargo?

A. Condensation and sweat. It would sweat the cargo and damage it.

Q. Would it be possible, under such circumstances of
216 stowage, &c., to prevent the heat of the black pepper from communicating to the rest of the cargo?

A. No, sir.

Q. Would the heat of the black pepper rise to the top tiers of the coffee?

A. Yes, sir.

Q. Would it produce the same result as if the coffee, black pepper, mace, cassia, and nutmegs were all stowed together in one mass?

A. It would produce nearly the same result as to sweat damage.

Q. Is stowage of such cargo, as described, good or bad stowage?

A. If the hold had been properly ventilated the damage
217 would not have occurred; under those circumstances it is not good stowages; and if it is not good it is bad stowage.

Q. Is such treatment of such cargo good or bad treatment?

A. Bad treatment.

Q. Is such stowage of such cargo usual or customary in that trade?

A. I should say not.

Q. Is such treatment of such cargo usual or customary in that trade?

A. No, sir.

Q. Was such stowage and treatment, as above described, or was it not, adapted to its destruction?

A. Yes, sir, it was.

Q. Did you ever before know or hear of stowage and
218 treatment of such cargo in that trade as above described?

A. In the Calcutta trade I have in one instance, which was a Calcutta cargo consisting of linseed and saltpetre and gunny cloth; the gunny cloth was very much damaged; the hatches were battened down, and kept so during the voyage; this was about the year 1848; this was the instance of the Henry Ware, on a voyage from Calcutta to Boston; the ship was not in a regular trade; that is the only instance I recollect of.

Q. What is usual or customary stowage in that trade?

219 A. It is as I have stated before in this examination that I have done myself.

Q. How long has that been the custom of stowage and treatment of such cargo in such trade to your knowledge?

A. Seventeen years—as long as I have known anything about the trade.

Q. Is such usage and treatment general in that trade?

Obj'd to by appellee.

A. As far as my knowledge extends, it is.

Q. If such a cargo, by ventilation in the warm climates, were brought down to the temperature of the surrounding atmos-
220 phere, and kept so, would any sweat damage occur to cargo by passing into colder climates?

A. No, sir.

Q. If such a cargo, whilst in warm climates, were not ventilated, how soon would you expect the production of sweat damage?

A. Sweat damage requires cold weather to produce it, and it would be produced in a short time, and a day or two would be sufficient to effect it.

Q. Where on such a voyage would you meet with colder weather?

A. At the Cape of Good Hope, or on the coast of America.

221 Q. With cargo unventilated, as I have just described, would the sweat damage be effected on such voyage by about the time of your reaching the latitude St. Helena?

A. I should think it probably would.

Q. If this cargo had been examined and aired every day on the voyage, what would have been the result?

A. A partial ventilation of it, as there was a bulkhead across.

Q. What is your own experience and practice as to examining and airing such cargo in that trade?

A. Give it as much air as possible at every opportunity.

Question repeated as to examining.

222 A. You can't examine a cargo when a ship is stowed full.

Q. What can you do, and what do you do, to ascertain the condition of such cargo during such voyage?

A. You can only tell by the heated air that escapes, whether

the cargo is hotter than the surrounding air, and I give it all the ventilation possible.

Q. If any heated air arises from the cargo, what do you do?

A. Give it all the ventilation possible.

Cross-examined: I am master of the ship Black Prince,
223 and have been so seventeen months, since she built; she belongs to Boston, to Bush & Wildes; I have been in the East Indies in her; one voyage from Boston to California; thence to China; took no cargo from California; from China I went to Sincape in ballast; from Sincape to China with a full cargo of rice in bags; then to Sincape in ballast; from thence to New York with a full assorted cargo, consisting of gambia, sugar, coffee, pepper, nearly two thousand bags of pepper, camphor, and spices; spices, mean cassia, mace, and nutmegs; this vessel is a double-deck vessel; I had between decks camphor, pepper, and
224 spices; before this I went to the East India, in the ship "Whistler," as master; I made one voyage in her out and back to the East India; the cargo I brought home in the Whistler on that voyage was from Whampoa, and consisted of silks, teas, and matting; prior to that I was master of "Sea Breeze," and made one voyage of eighteen months in her to the East Indies, and brought home a cargo of tea from Shanghai to New York; prior to that I was in the ship "Orisa," as mate or chief
225 officer, and made two voyages in her from Calcutta to Boston; she was a double-deck vessel; the "Sea Breeze" was a single-deck barque; I brought home in the "Orisa," on her first voyage from Calcutta to Boston, linseed, gunny bags, saltpetre, lac dye, and shellac, and brought in her on the next voyage the same kind of cargo; previous to that I was in Burmah, and brought same kind of cargo on the same voyage; she was double-deck vessel; prior to that I had been in Delhi, on a voyage to
226 China, and brought home tea; I was in her on two voyages; there was a little matting, and I think some silks, in her cargo; both voyages the same, and cargo the same; I was also in the "Gentoo," one voyage from Calcutta to Boston; she had about the same cargo as the "Orisa;" it was seventeen years ago; I can't positively remember the nature of the cargo, it was so long ago; I have never brought a cargo from Batavia or Padang to the United States, or been attached to a vessel that brought a cargo to
227 the United States from there; I have never been to those places; I have never been to the island of Java beyond passing it; I have never been in a brig of any size in the East India trade; not being experienced in brigs, I can't say whether it is usual to build ventilators in them; I have seen a great many brigs in my time; I could not tell without examining them whether they have ventilators built in them or not.

Q. Did you ever before know or hear of stowage and
218 treatment of such cargo in that trade as above described?

A. In the Calcutta trade I have in one instance, which was a Calcutta cargo consisting of linseed and saltpetre and gunny cloth; the gunny cloth was very much damaged; the hatches were battened down, and kept so during the voyage; this was about the year 1848; this was the instance of the Henry Ware, on a voyage from Calcutta to Boston; the ship was not in a regular trade; that is the only instance I recollect of.

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227 the United States from there; I have never been to those places; I have never been to the island of Java beyond passing it; I have never been in a brig of any size in the East India trade; not being experienced in brigs, I can't say whether it is usual to build ventilators in them; I have seen a great many brigs in my time; I could not tell without examining them whether they have ventilators built in them or not.

Q. From your experience as a nautical man, and from the brigs you have seen, and your experience for the last seventeen
228 years, can you not tell us whether brigs are usually built with ventilators or not?

Obj'd to by appellants' counsel.

A. No, sir, I can't tell you; I have not paid much attention to brigs; I have sailed in one; she had no ventilators; she had cabin and forecastle below; brigs are usually single-deck vessels; I have never seen a double-deck brig, but have seen a brig with half a deck, with beams forward; the object of putting ratans between pepper and coffee, would be to prevent the contact of two such articles.

229 Q. Why do you want to prevent it?

A. On account of pepper being a high-flavored article, and coffee a delicate article and easily affected by the of the pepper.

Q. When you speak of matting the top of the cargo, in your direct examination, you mean laying the mats on top of the cargo as you would slates on the roof of a house, commencing at the sides and going up to the centre?

Objected to by appellant's counsel.

A. Yes.

Q. And your idea in so doing, would be to have the sweat
230 run off to the sides, would it not?

Obj'd to by appellant's counsel.

A. Yes.

Q. Did you ever see that tried?

A. No.

Q. Will not a cargo, after being stowed, settle?

A. Yes, sir, more or less.

Q. Will not pepper and coffee in bags settle considerably?

A. Yes, sir.

Q. Will it not settle more in the centre than at the sides?

A. Perhaps it might; I can't say.

Q. From your experience can't you tell?

A. Never having carried a full cargo of one kind, I can't say.

231 Q. The pepper which you carried in the last vessel you were in, how did you stow that?

A. All the way across, most of it in the fore peak.

Q. How far did that reach from the foremost part of the pepper to the aftermost part of the pepper?

A. About twenty feet.

Q. Can you not tell whether that pepper settled most at the sides, or in the centre? Obj.

A. It settled so little it was imperceptible; I had no matting over that.

Q. What time of the year did you arrive with it?

232 A. The 24th of October.

Q. If a tight bulkhead reaching down six feet from the deck between coffee and pepper, stowed separately, would that permit a circulation of the hot air from the pepper over the coffee, any more than it would the current from the wind-sail, the coffee being stowed forward, and the pepper aft of the bulkhead?

Obj'd to by appellants' counsel.

A. The pepper being on the other side of the bulkhead, would still act upon the coffee by its heat, the same as a stove upon any article contiguous to it.

Question repeated.

233 The hot air could not blow through the bulkhead, but heat would penetrate nevertheless.

Q. Then your idea is, that the effect would be to heat the coffee, and make that give out a damp or moistened air from such heat?

A. Yes, sir, that is my idea.

Q. Did you ever see a cargo of this kind aboard of a brig?

A. No, sir.

Q. Would it be proper to have the hatches off in wet or damp weather?

A. No, sir.

Q. Did you ever know of a cargo of coffee, or hear of a

234 cargo, coming from the West Indies to New York, sweating and being badly damaged by sweat?

A. I never knew of a cargo of coffee, or heard of it, never having been in that trade.

Q. Coming to the coast of the United States in the winter months, would it be prudence or judgment of the master of a brig to come through the West Indies and on the coast of the United States in March with loose hatches?

Obj. to.

A. No, sir, I should think not.

Q. How far on the voyage from the East Indies would

235 you think it safe and good judgment for a brig to come before you battened down her hatches, arriving here in the latter end of the month of March?

Obj'd to by appellant.

A. About the time we reached the Gulf Stream; that would be about latitude 35°, and longitude about 70°; that would be to the northward of the West Indies; that would be a little southward of Cape Hatteras.

Q. Would you consider it good judgment, or seamanship, in a small single-deck vessel, in the month of March, to come as

236 far north with your hatches off?

Obj. by appellant's counsel.

A. If the hatches were unprotected, no.

Q. On the voyage from the East Indies to New York are there

not sometimes very sudden changes in the weather, sudden storms and gales?

A. In some latitudes there are.

Q. Give us the latitudes.

A. Off Cape Good Hope and on our coast.

Q. How far do you consider "off" the Cape of Good Hope as extending?

A. From longitude about 16 east to 25 east.

237 Q. Is there no other place on that voyage where the changes in the weather are sudden—where sudden gales and storms arise?

Obj. to.

A. Very few, except there and on our coast.

Q. Where are those few places you speak of?

A. In some months off the West Indies and Bermuda.

Q. What months are those?

A. August, Sept., and Oct., and no others—that is, as far as my knowledge extends.

Q. Are there no sudden changes in the South Atlantic?

Obj. to.

238 A. No, sir; after passing the Cape of Good Hope we expect uninterrupted fine weather in the South Atlantic.

Q. In the Indian ocean are there no sudden changes, sudden gales or storms?

Obj. to.

A. In some months there are.

Q. Did you ever arrive here in March, in the United States?

A. Yes, sir, in Boston—in "Gentoo," from Calcutta.

Q. What year?

A. 1842, I think; I never arrived in any other vessel in that month; in Feb'y I arrived in the "Orisa" from Calcutta at Boston.

239 Q. With a general cargo properly stowed in the usual manner in the trade in which a vessel usually was, the vessel being built without ventilators, would it not be proper and good judgment and good treatment of the cargo to ventilate it by keeping the hatches open whenever the weather would permit?

Obj. to.

A. Yes, sir.

Q. Were you attached to the ship "Henry Ware?"

A. No, sir, and was not on board of her during the voyage.

Q. Of your own knowledge do you know whether the hatches on the "Ware" were kept battened down or not?

A. From personal inspection, no, sir.

240 Q. Your statement in your direct in regard to that matter is from hearsay?

Obj. to.

A. From hearsay of the treatment, but inspection of the result. Answer obj. to by appellee.

Q. I did not ask you about the inspection; I asked you whether your testimony in regard to the treatment was not from hearsay?

Obj. to.

A. Yes, sir.

Q. In your judgment can a single-deck vessel, with a full cargo of pepper, coffee, cassia, and spices and India-rubber, leave the East Indies in Dec'r and arrive here in March in extremely

241 cold weather, and her cargo be free from sweat damage?

Obj. to.

A. By ventilation she could.

Q. Did you ever try it in such a vessel?

A. I have tried it in a single-deck barque, and arrived in Nov'r.

Q. I ask you, arriving in extremely cold weather?

Obj. to.

A. No, sir, not in extremely cold weather.

Q. What vessel and what cargo do you say you tried that in?

A. In "Sea Breeze," in a cargo of tea; there was no

242 pepper in the cargo, nor coffee; there was some cassia in that cargo, enough to dunnage with; there was no other spices besides the cassia in the cargo, nor India-rubber.

Re-direct on the part of the Appellant.

Q. Is there any difference in the heat of the climates of Calcutta, Singapore, Java, and Sumatra, and if so what, in the months of Dec'r and Jan'y?

A. My belief is there is a difference in the heat; it is greater in Java and Sumatra than in Calcutta in the month of Dec'r, and as to Singapore about the same.

Q. What is the heat in Java and Sumatra in those

243 months?

Mr. Donohue objects to this question, on the ground that the witness has testified he never has been in Java.

A. I can't tell exactly; it is about ninety; it is their summer months.

Q. Is the stowage and treatment of cargoes in that trade, so far as regards ventilation, preventive of ship sweat, the same, irrespective of the constituents of such cargo?

A. According to my experience it is.

Q. Is a single-deck brig of about the size of 280 tons, of

244 the size and sort hereinbefore described, a suitable vessel to transport such a cargo as described on such a voyage to this country?

A. With proper ventilation I should think it was.

Q. Are such vessels usually employed in that trade?

A. I don't recollect of ever seeing any brig in that trade at all—that is, in the trade from Java to this country.

Q. What effect would the contact of black pepper with coffee in cargo have on the coffee as regards sweat damage?

A. I don't know that it would have more effect than if separated a little; the heat of the pepper arises to the top of the hold, and then condenses and falls upon the top of the coffee and the whole cargo, and produces the sweat damage.

Re-cross.

Q. Have you any personal knowledge of the heat in the port of Batavia?

A. No, sir, nor at Padang.

Q. Have you any personal knowledge of the vessels that load in the port of Batavia—that is, as to their size and condition and description?

Obj. to.

A. No, sir.

CHAS. H. BROWN.

UNITED STATES OF AMERICA,
246 *Southern District of New York, ss.*

I, Charles W. Newton, a commissioner appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled
"An act in addition to an act entitled an Act for the
247 more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness's testimony is material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial of the above cause, and is about to depart out of the ju-
248 risdiction of this court on a voyage to sea. I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctors of the appellee, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit. I further certify, that on the twenty-first day of November, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Robert Dodge, esq., as counsel for the appellants, and

C. Donohue, esq., counsel for appellee, and by the witness,
249 who of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from such statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand to the court for which the same was taken. And I do further certify, that
250 I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this twenty-first day of November, in the year of our Lord
[L. S.] one thousand eight hundred and fifty-seven, and of the independence of the United States the seventy-

CHAS. W. NEWTON, [C. W. N.]

251 *United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.*

Filed the 6 day of April, 1858.

CHARLES H. BROWN.

Appellants then read the following deposition, subject to objection:

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this fifth (5th) day of December, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the
252 United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Con-
253 verse F. Plumer, a witness *on the* to testify and the truth to say, on the part and behalf of the appellants, in a certain

suit or matter of controversy, now depending and undetermined, in the circut court of the United States for the southern district of New York, wherein George B. Moorewood et al. are appellants, and Lorenzo N. Enequist appellee. And the said Converse F. Plumer, being about the age of thirty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Converse F. Plumer, and he did thereupon depose, testify, and say as follows, viz:

254

I reside in Portsmouth, New Hampshire; I am a master mariner, and am about to sail out of this port.

Q. How long have you been a seaman, and how long have you been in the East India trade, and what cargoes have you brought, and what voyages have you made?

A. I have been a seaman nineteen years—of this time nine years a master; I have been in the East India trade as master between seven and eight years, and one year I spent in the Rio trade as master; I was about three years in the East India trade prior to that, chief officer, and I joined the trade as chief officer; I made some three or four voyages between Rio and this country before I became an officer; this would occupy some eighteen months; I have made voyages from Rio to New York and back again, from Richmond to Rio and back again, from Boston to Rio and back to New Orleans, and I have also made voyages from New York to Europe and back again for some five years; I have made voyages from New York and Liverpool to Bombay and back again, and also from New York to Batavia and Samarang, on the coast of Java, and back; also from New York to Singapore and back as master; also from New York to San Francisco and back; thence to Manilla and back; also from New York to Australia, and from thence up to China; I have been three times in China, and four or five times in Singapore, from Batavia, Bombay, and Singapore; the cargoes have been assorted from China; they have been tea and sugar one voyage—tea, coffee, and ratans the other; from Rio they have been one voyage of rosewood and coffee, and one voyage of hides and rosewood; and two or three voyages from Rio, I am not certain which, they have been entirely of coffee.

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Examination, on motion of J. R. Steele, esq., counsel for appellee, adjourned to 7th of Dec'r, at 12 o'c.

258

Dec. 7th, 12 o'c.—Counsel for respective parties and consent to the examination standing adjourned to Dec'r 8th, at 1 o'clock p. m., counsel for appellee, Mr. Steele, agreeing that in case he should not be present at 1 o'c., the counsel for appellant might proceed in his absence to examine the witness.

Dec'r 8th, one o'c.—Counsel for respective parties appear, and

appellant's counsel proceeds to the examination of the witness as follows, viz:

Q. What is an assorted cargo in the East India trade?

A. An assorted cargo consists of spices, sugars, pepper, coffee, gambia, and dies of any sorts.

Q. In whose employ are you now?

An. Messrs. Siffken & Ironsides, and am commander of the ship Ino.

259 Q. What is their trde?

A. Their principal trade is in the East Indies, and they have some vessels to Rio.

Q. How long have you been with them?

A. Twelve years.

Q. In what kind of vessels as to single or double deck, size, or rig, have you made the voyages you have spoken of?

A. They have been in both single and double deck vessels from two hundred to nine hundred tons, in all rigs from a brig to a ship.

Q. Had these vessels ventilators built in them or not; and
260 if so, in which of those vessels were such ventilators built, and what were they? Describe them.

A. Some of them had ventilators and some of them had not; the present ship, the Ino, has ventilators, and those of the others, the ship Isaac Walton and ship Agnus, had ventilators built in them, and the others had not. The Ino has a large pipe carried below through the deck to the bottom to convey the air down, and one forward also, which gives a free ventilation to the air. On top of the covering board between each stanchion of the bulwarks
261 there is a hole bored through the covering board of about two inches in diameter, with a composition fixture that is screwed in, which can be taken out at any time according to the weather. The Agnus and Isaac Walton had ventilators built in similar to the last; but of the first none at all.

Q. Are you familiar with the stowage, or relative packing, or stowage and treatment of assorted cargoes on shipboard in the East India trade?

A. I think I am.

Q. If you had a remarkably tight and dry vessel, a brig
262 of about two hundred and fifty tons, without any ventilators built in her, and with a clear hold, cabins, and forecastle on deck, at Batavia or Padang, in the month of Dec'r in any year, to load with a cargo of about eleven thousand pockets or grass mat bags of coffee, about 600 bags of black pepper, 600 bundles of cassia vera, with 40 casks of mace and nutmegs, and ratans for dunnage, how would you store or stow such cargo in such vessel?

A. I should stow the coffee in the centre of the ship; I should
263 stow the pepper forward in the peak; spices and cassia aft in the run, well dunnaged throughout *throughout*, and should endeavor to have mats on top of the cargo; with such cargo I should endeavor to have three thicknesses of mats on the cargo.

Q. With such cargo in such brig would you separate any portion of such cargo from any other portion; and if so, what, and how?

A. If I should separate the cargo in any other way than in the stowage, as I have stated, would merely put mats between the various kinds of cargo.

Q. With such cargo in such brig without ventilators of
264 any kind built in her, what would be the effect of matting the top of such cargo, or the matting the bearers or stanchions, or around the hatchways of the hold, as to sweat damage to cargo?

A. It would prevent damage from sweat in a greater or less degree.

Q. Would such matting as aforesaid absorb the moisture in the hold so as to prevent injury from it to the cargo?

A. It would not sufficiently for a long voyage, unless it was warm weather nearly all the time it might; with the weather
265 cold coming round the Cape of Good Hope, or cold during any part of the voyage, she would sweat so much the mats might not completely protect the cargo, but it would be a great benefit. I consider the mats actually necessary.

Q. If the voyage from Java or Sumatra of such vessel with such cargo to this port, starting from Batavia in Dec'r, with a run of about ninety-eight days, and uninterrupted fine weather until within two days of this port, what would have been the effect of such matting as to the prevention of sweat damage to such cargo?

266 A. I think it is already answered, that it would have prevented damage in a more or less degree.

Q. If such a cargo in such brig for such voyage was stowed as I now describe, viz: no cargo whatever in the peak, the coffee amidships extending to twenty feet forward of the main hatch and abaft the main hatch about fifteen feet to a six-foot bulkhead, so called, coming down from the roof of the hold or deck of the ship, behind this bulkhead the 600 bags of black pepper lying with or
267 on top of 600 bundles of cassia, and also with the 40 hogsheads of mace and nutmegs, with the hatches nailed, battened, and tarpaulined down, without top matting or covering of any kind on the cargo, and cargo stowed tight up to the deck, without using wind-sails, with constant fine weather throughout that voyage of ninety-eight days till a day or two of her arrival at this port, starting from Batavia the first week in December and arriv-

ing at this port the last of March, what would be the probable heat of such hold and cargo in the warm climates?

268 A. It would be very warm, probably one hundred, I should think; I have not tried it. From my own feelings, I should think it would be over one hundred.

Q. On the statement of stowages and treatment of cargoes given in this last question, was everything, or anything, done to prevent sweat damage to such cargo?

A. I should think there was nothing done, with the understanding the hatches were not taken off during the voyage.

The latter part of the answer objected to by counsel for appellant, as not responsive to the question.

269 Q. With a bulkhead reaching down from the deck or roof of the hold in such brig, single-decked, and placed in the hold about twenty feet abaft of the main-hatch, and such cargo, as before described, stowed on either side of it, tight up to the deck, leaving no air space, what would be the effect on the heat of the hold ventilation of such cargo and production of sweat damages to such cargo?

A. It would prevent the circulation of air; that is, I take it, it was a tight bulkhead; the prevention of the circulation of air would cause an increase of sweat and damage.

270 Q. Without such a bulkhead in such brig, as before described, what would be the effect as to the heat ventilation and sweat damage?

A. The air would probably be cooler without the bulkhead, on account of having more circulation; ventilation must come, of course, from the outside. Air must be carried below, in order to ventilate. Without outer ventilation it would damage, with or without the bulkhead; I should think less without it than with it.

Q. Is ventilation in such circumstances, with such vessel, possible without a clear draught of air throughout the cargo?

271 A. It is impossible, from the fact that no clear draught of air could be got there under the circumstances.

Q. Have you met with sweat of the hold; what is its cause and nature; is it or not a natural result from well known causes, and what are those causes?

A. I have; its cause is from the overheating of the hold, the temperature of the hold being greater than the surrounding atmosphere, only to be avoided by ventilation of some kind, on a long voyage; it is a natural result from the overheating of the

272 hold; the cause I have already stated. It will not occur without the overheating of the hold, or without the hold being warmer than the surrounding atmosphere.

Q. In passing from warm to colder climates, what liability of damage occurs to such cargo?

A. Liability of sweat damage would be much greater in cold climate than in warm.

Q. In a voyage confined to hot climates would there be a liability to sweat damage?

A. With such a cargo there would—heating cargo, like pepper.

Adjourned, to continue the direct examination, to 3 o'clock
273 p. m.

(Signed) C. F. PLUMER.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Charles W. Newton, a commissioner duly appointed
278 by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to
279 establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness's testimony material and necessary in the cause in the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial of this cause, and is about to depart on a voyage to sea out of the jurisdiction of this court.

I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and
280 served on the proctors for the appellees, to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the 5th day of December, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by the proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and
281 the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of transmitting the same with my own hand to the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named,

nor in any way interested in the event of the cause named
282 in said caption.

In testimony whereof, I have hereunto set my hand and seal, this eighth day of December, in the year of our Lord
[L. S.] one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-first.

CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern district of New York, in the second circuit.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this 13th and 14th days of
283 January, in the year of our Lord one thousand eight hundred and fifty-seven, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and
284 bail in civil causes depending in the courts of the United States,' " passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Benjamin C. Townsend, a witness, to testify and the truth to say, on the part and behalf of the appellant, in a
285 certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein George B. Moorewood et al. are appellants and Lorenzo N. Enequist is appellee.

And the said Benjamin C. Townsend, being about the age of thirty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Benjamin C. Townsend, and he did thereupon depose, testify, and say as follows, viz:

286 I reside in the city of Brooklyn, State of New York. I am a seafaring man, and am about to proceed to sea in the course of a few days. I have been a seaman for twelve years past, engaged in the East India trade mostly.

Q. What voyages have you made? In what vessels and whose employ are you now, and in what capacity; and in what trade are your owners, and how long have they been in such trade?

A. I have made voyages from New York to China and re-
287 turn; and from New York to Mobile and return; New York to Havre and return—all my voyages have been from New York—from New York to Liverpool London and return; from New York to San Francisco and return; another voyage to San Francisco and Calcutta and return; from New York to Melbourne, China and return; from New York to Penang and Singapore and return. I made these voyages in the barque Grafton, brig Lynden, ship St. Nicholas, ship William H. Harbeck, ship Rapid, ship Con*d*federation, ship Celestial, and barque Reindeer. There may be two or three other vessels I can't now recollect. I am
288 now in Crocker & Warner's employ as master. My owners are in the East India trade, and have been for many years. I am at present master of the barque Reindeer.

Q. What cargoes have you brought from the East Indies to New York?

A. Teas, spices, sugar, coffee, pepper, hides, tin, gambia, rubber, ratans, cinnamon, cassia.

Q. What is an assorted cargo in that trade?

A. The articles I have mentioned above.

Q. Are you familiar with the stowage and treatment of such cargoes in that trade?

A. Yes.

289 Q. If you have a remarkably tight and dry vessel, a brig of about 250 tons burthen, without any ventilators built in her, and clear hold, and cabin and forecastle on deck, at an East India port, say Batavia or Padang, in the month of Dec'r, in any year, to load with a cargo of about 11,000 pockets or grass mat bags of coffee, about 600 bags of black pepper, and 600 bundles of cassia, with 40 casks of mace and nutmegs, and ratans for dunnage, how would you stow it?

A. Dunnage with ratans on the floor and to the sides
290 chock to the deck, then mats outside of the ratans, pepper in both ends, coffee in midships, and the casks stowed in the ground tier—I mean the casks of mace and nutmegs. Stow in the cassia to make the loose stowage.

Q. What of that cargo would you put in the peak?

A. Pepper.

Q. Would you separate any portion of this cargo; if so, which from the other, and how?

A. Separate the pepper from the coffee by ratans and mats. The casks of nutmegs would not be stowed on the coffee so as to
291 chafe the coffee bags. This is all the separation I would make. That includes sufficient dunnage of ratans to keep the coffee clear of the casks of mace and nutmegs.

Q. What is the nature of black pepper? Is it heating, or not?
A. It is heating, very.
Q. Would this cargo described be or not peculiarly liable to injury from sweat of the hold?
A. Yes sir.
Q. What will prevent injury from sweat of the hold to such cargo?
A. Ventilation.
Q. What means do you adopt therefor?
A. When we have no ventilators built in the ship, we
292 put them in as the case requires.
Q. What would be the effect of matting the top of such cargo and the roof of the hold, particularly around the hatchway, as to the prevention of sweat damage?
A. It would tend to preserve it from the sweat.
Q. What is your own practice in this respect as to matting, as spoken of in the last question?
A. Generally stowed mats on top of the cargo; that is, certain kinds of cargo, such as teas.
Q. As to assorted cargoes, what is your practice?
293 A. We don't always do it. It depends upon the kind of cargo we have.
Q. Would the matting protect the cargo from sweat damage?
A. We presume so, when we put them there, they would. That is the object of putting there.
Q. If a bulkhead reaching down from the roof of the hold six feet was placed in the hold of such a brig as before described, about 20 feet aft of the main hatch, and another bulkhead was placed athwart the brig, in the hold, at a point 15 to 16 feet
294 forward of the main hatch, and that cargo described stowed tight up to the roof of the hold, what would be the effect on the heat of the hold, ventilation of such cargo, or production of sweat damage?
A. There is no ventilation there; of course there must be sweat there and steam, which would damage the cargo.
Q. Have you met with sweat of the hold? What is its cause and nature? Is it or not a natural result from well known causes, and what are those causes? Can it always be produced in that trade, and how will it occur without those causes?
295 A. I have met with sweat of the hold; its causes are the heated air confined. It is the natural result from well known causes, depending upon the kind of cargo, whether heating or otherwise. Sweat damage can always be produced in that trade by having no ventilation. Sweat damage will not occur with proper ventilation.
Q. Without those bulkheads in such brig, with such cargo stowed as before described, what would be the effect on the heat

of the hold, ventilation of the cargo, or production of sweat damage?

296 A. The cargo stowed up to the deck, I can't see how there could be any ventilation.

Q. With hatches all fastened down throughout such voyage in such brig with such cargo, what would be the result as to sweat damage?

A. There would be a good deal of sweat damage.

Q. With such two bulkheads in the hold as before described, with one or more hatches open, fore or aft of the bulkheads, could a draught of air be made to pass through the cargo?

297 A. No, sir.

Q. If by proper ventilation on such voyage, when in warm climates, such cargo had been brought to the temperature of the surrounding atmosphere and kept so, would or not sweat damage occur?

A. I should say not.

Q. In the warm climates, on such a voyage as described, with steady fine weather, is it difficult or dangerous to slide or lift off some of your hatches?

A. No, sir.

Q. How often do you do it yourself, and what is your practice?

298 A. I always take off all hatches in fine weather and keep them off.

Q. With such two bulkheads as described in the hold, with wind-sails introduced into the opened hatches, and cargo tight up to the deck, could such cargo have been effectually ventilated?

A. No, sir.

Q. Is it or not practicable or expedient with such cargo, on such voyage, to have an air space in stowing such cargo across the top fore and aft?

A. I should say it was; I have never seen a vessel stowed so close up but there was a little space on top of the cargo.

299 Q. With cargo properly stowed and secured, is there any danger of shifting, if a space of two feet or more on top were left open?

A. There is no danger.

Q. Have you sailed in ballast?

A. Yes, sir.

Q. If such cargo in such brig, stowed as I now describe, viz: no cargo whatever in the peak, coffee amidships, extending sixteen feet forward to a bulkhead athwart the brig, and about twenty feet aft to the six-feet bulkhead coming down from the

300 deck, behind this bulkhead the 600 bags of black pepper, forward of the forward bulkhead the 600 bundles of cassia, lying on the India-rubber, the mace and nutmegs, 40 casks, in

the run aft under the pepper, cargo stowed tight up to the deck, hatches nailed, battened, and tarpaulined down, no top matting or covering on the cargo, without using wind-sails or any other mode of getting air into the cargo, on a voyage of ninety-eight days from Batavia to New York, with constant fine weather
301 on the voyage till two days of her arrival at New York, voyage starting from Batavia the 1st week in Dec'r, and arrival the last week in March ensuing, was such stowage, as described, good or bad stowage?

A. I should not stow that cargo that way; it is bad stowage.

Q. Was it good or bad treatment of such curgo?

A. Bad treatment.

Q. Was it usual or customary stowage or treatment of such cargo in that trade?

A. Not in the vessels I have seen, it has not been.

Q. Did you ever see or hear of such stowage or treatment of such cargo in that trade before?

A. No, sir.

302 Q. Was anything done to prevent sweat damage?

A. It appears not; no, sir.

Q. In passing from warm to colder climates with such cargo, stowed as before described, what would be the effect as to sweat damage?

A. It would sweat worse; it would be injurious; it would create more steam.

Q. Would it be possible, in such stowage and treatment as described, to prevent the heat of the black pepper from communicating to the rest of the cargo?

A. No, if there were no ventilators. If I had understood the question, I would have answered, no, sir.

303 The latter part of the answer objected to by Mr. , counsel for appellee.

Question repeated, after reading the previous question to the witness.

A. No, sir.

Q. Would such stowage and treatment of such cargo as stated in the former question, produce the same result, so far as heat of the hold, as if the coffee, cassia, black pepper, nutmegs and mace, were all stowed together?

A. Of course it would produce damage. Yes, certainly it would produce the same result.

Q. You have previously described your own mode of
304 stowing such cargo; please tell me, is your mode of stowage and treatment, and ventilation, usual and customary in that trade or not?

A. Yes, sir.

Q. Is that usage, and custom of stowage and treatment, general in that trade?

A. Certainly it is.
Q. Is it well established in that trade?
A. Yes, sir.
Q. Would you adopt such stowage in all cases, with such cargo?
A. Yes, sir.

BENJ. C. TOWNSEND.

Cross-examined on the part of the Appellee, by Mr. Donohue, Jan'y 14th, 1858.

I have made six voyages to the East Indies, at least; there
305 may be more, I don't now recollect; the voyages have been as follows: three voyages from Whampoa to New York; two of these were to New York and one to Liverpool.

Q. In what vessels were these three voyages made?
A. Barque Grafton and Candace, and the ship William H. Harbeck, was to Liverpool; ship Talbot from Whampoa to New York.
Q. From what other ports, and in what ships, and to where?
A. From Calcutta to New York, in ship Severn; from Shanghai to New York, in ship Celestial; from Singapore to New
306 York, in the barque Reindeer; that is all I think of now.

Q. Were you master on all of those voyages?
A. No, sir.
Q. On how many, and what ships?
A. One; the barque Reindeer.
Q. Did you stow the cargoes, or was it stowed by stevedores in the ports at which you took it in?
A. Stowed by stevedores.
Q. What cargoes did you bring from Whampoa to New York on the voyages you have mentioned?
A. Teas, silks, and cassia in mats.
Q. What cargo did you take from Calcutta to New York?

A. Saltpetre, linseed, hides, tumeric, gunny cloths; there
307 may have been some other things; I don't recollect; these were the principal things.

Q. What cargo from Shanghai to New York?
A. Teas and silks.
Q. What cargo from Whampoa to Liverpool?
A. Teas.
Q. What cargo from Singapore to New York?
A. Pepper, sugar, coffee, hides, tin, gambia; spices, such as nutmegs, mace, and cinnamon, in boxes; teas, cocoanut oil, India-rubber and ratans; there might have been other things which I don't recollect.
Q. What cargo from Shanghai to New York?
A. Teas and silks.

Q. Were not all the vessels which you have enumerated
308 in which you were in the East India trade double-deck vessels?

A. Yes, sir.

Q. Have you ever been in a single-deck vessel in the East India trade?

A. No, sir.

Q. Did you ever see one in the East India trade?

A. I have seen single-deck vessels out there without cargoes on board.

Q. Had or not all the vessels in which you were in the East India trade ventilators built in them?

309 A. That question I might answer in two ways; I have never sailed from a port in China bound home in a vessel that had not standing ventilators, but what we put them in for the passage home.

Q. Question repeated.

A. They had.

Q. Did you ever mat the top of a cargo; and if so, when?

A. This voyage, from Singapore, in the barque Reindeer.

Q. Was that matting any more than stowing what mats you had on top of the cargo?

A. The mats were put on top of the tea expressly to absorb the moisture from the upper deck.

310 Q. Did you ever mat a cargo before; and if so, on what vessel, and who discharged her cargo here?

A. Never was in a vessel before that had that steaming cargo—the same kind of cargo.

Q. What cargo had you between decks on this voyage that you last speak of as having matted?

A. Teas.

Q. What cargo had you in the lower hold on that voyage?

A. We had sugar, pepper, gambia, oil, India-rubber and ratans of course.

Q. Any coffee?

A. No coffee in the lower hold.

Q. Where was the coffee stowed?

A. Aft, in between decks.

311 Q. That is the only time you used mats?

A. That is the only time I have used mats on the top of the cargo; you have no reference to mats on the side of the vessel, I take it?

Q. Did you ever see a vessel with bulkheads such as your opinion has been asked of in the direct examination?

A. No, sir.

Q. Is it or not usual, and is it or not your custom, to stow your cargo as close up to the deck as you can?

312 A. It is for the interest of all concerned to get in as much cargo as possible without damaging it.

Q. Question repeated.

A. I can't give any other answer more positive than that; I can't give any different answer than I have given.

Q. Can't you tell from your own experience whether you stow your cargo in the hold as close up to the deck as you can get it?

A. We can sometimes get some kinds of cargo chuck up to the deck in some places if we wish, but we don't do it with all kinds of cargo; you can in some places stow pepper close up to
313 the deck, but it won't stay there—that is, bulk pepper, not bag.

Q. With coffee or pepper in bags, don't you stow as high as you can get the bags into the space under the deck?

A. I have never been in a vessel that was loaded entirely with coffee and pepper; in that case I would act according to my judgment in stowing that cargo.

Q. In stowing the pepper on this last voyage, how high was it stowed to the deck—I mean at the time of stowage?

A. The pepper was in bulk; there was some few bags
314 stowed separate; it was not stowed, probably not, within six inches of the underneath part of the upper deck, or within six inches of the underneath part of the lower deck. It would be impossible to trim pepper in bulk chuck to the deck the whole space.

Q. Were you ever in a vessel that carried pepper in bags in any quantity?

A. That was the first voyage that I had anything to do with pepper cargoes.

Q. How was the coffee, in bulk or in bags?

A. Bags.

Q. How high did you stow that to the deck above?

A. Did not touch the deck at all; there was a small
315 quantity, about one hundred and fifty bags.

Q. Was there anything stowed on top of it?

A. No, sir, coffee on coffee.

Q. In stowing tea, how near do you stow it to the deck?

A. Tea is in different size packages; calculate to stow it as close to the deck as we can and keep clear of chafe of the deck with the working of the ship and cargo, generally from the East
316 Indies home; when cassia is to be had we stow the cassia on top of the teas.

Q. Besides the teas in the between-decks, on the voyage on which we have been speaking, what cargo had you?

A. There was coffee, pepper, nutmegs, cinamon in boxes, and some sugar.

Q. Was there any cargo stowed on the pepper in the between-decks?

A. Not on the bulk pepper.

Q. Was there any bags of pepper stowed in the between-decks?

A. Yes, sir.
Q. How many?
A. I can't say the exact quantity; there might have been two hundred and fifty.
317 Q. Anything stowed on them?
A. I think not.
Q. Were they stowed forward or aft, or among the bulk pepper?
A. Both forward and aft.
Q. Was that bag pepper stowed forward and aft at the ends of the bulk pepper?
A. Some of it was.
Q. How high was it stowed?
A. As high as we could conveniently get the bags.
Q. Was anything stowed on the sugar?
A. Nothing but sugar; no other cargo except a few ratans.
Q. How high was the sugar stowed?
A. Probably within an inch or two of the deck.
318 Q. How much sugar had you on board?
A. We had some thousands of bags; I can't say exactly.
Q. Was it partly stowed in the lower hold and partly in between decks?
A. Yes, sir.
Q. How high was that stowed; the same as between decks?
A. About the same.

Re-direct Examination by Mr. Dodge for Appellants.

Q. How long have you sailed before the mast, and as an
319 officer, second mate and first mate?
A. I was before the mast some six voyages to China and Europe; I was an officer, 2d mate and mate, seven years; master now about a year and a half, one voyage.
Q. Were your cargoes stowed under your eye, and by your directions?
Objected to by Mr. Donohue, counsel for appellee.
A. The last cargo I brought in in the Reindeer was.
Q. Did you make a voyage in a vessel called the Lynden; if so, when and where, and with what cargo?
A. Yes, sir. I was before the mast in her, and went to Mobile and back to New York in her; the cargo out was assorted, and home cotton.
320 Q. What size rig and decks had she?
A. She was a brig, about four hundred tons; she did not have a between-decks fore and aft only part of the way.
Q. Did you ever before hear of bringing a cargo of the kind and quantity described in the direct examination from the East Indies to New York in a two hundred and fifty ton single-deck brig with a clear hold?

A. I myself don't know anything about the kind.

Q. Would it be proper care of such cargo not to have ven-
321 tilators put in such brig for such voyage as described in the direct examination?

Objected to by Mr. Donohue, counsel for appellees.

A. I should have built ventilators there.

Q. Question repeated.

A. I built ventilators in the vessel I commanded coming home, as she had no ventilators built in her.

Q. Which vessel?

A. The Reindeer.

Q. Was the pepper spoken of on your cross-examination black pepper?

A. I think it was.

Q. Besides the ventilators built in the vessel as you have just told us, how did you ventilate the Reindeer's cargo?

Objected by Mr. Donohue, counsel for appellee.

322 A. In fine weather took off some of the hatches.

Q. How large was the Reindeer?

A. Barque, 497 tons.

Q. Have you seen bulkheads in holds of vessels?

A. I have seen bulkheads in between decks when they had cabins and forecastles below.

Q. How did your Reindeer cargo come out; was there any sweat damage?

A. The cargo came out in good order. The barque has been discharged some two months, and I have heard no complaint of any damage.

Q. Did you ever see a two hundred and fifty ton brig have five hatches?

A. No, sir.

323 Q. With such bulkheads and such cargo as described in the direct examination, if that brig had been double-decked, with the same stowage and treatment of cargo, what difference in result as to sweat damage would the double-deck have made?

Objected to by Mr. Donohue.

A. A double-deck vessel of that tonnage would be very small potatoes I should think, with her same dimensions, as I presume they were.

Q. Question repeated.

A. There would have probably been more damage.

Q. Is bulk pepper or not more difficult of stowage and
324 ventilation than if bagged; if so, what is the difference?

Objected to by Mr. Donohue.

A. I don't know that it is more difficult to stow it.

Q. You have spoken of cassia stowed on top of tea in your cross-examination; was it cassia in mats?

A. It was.

Cross-examination resumed.

Q. The mats contained cassia, did they not?
A. They did.
Q. Who was the stevedore that discharged the Reindeer here?
Objected to by Mr. Dodge, for appellants.
A. Simpson; Henry Simpson, I believe.
Q. Who did your cargo come to?
325 A. Crocker & Warren; the same persons who own the vessel.
Q. Was your between-decks all full?
A. As full as I have before said.
Q. Question repeated.
A. I should like to know what is meant by the word full—as much as could be got in, or as much as we wished to put in.
Q. Question repeated.
A. It was not all full, for you could put in some other things if wanted to.
Q. When you left there did you have a full cargo in your judgment?
326 A. We did.
Q. Then did you have in your judgment a full cargo in between decks?
A. We did.
Q. Then, on your oath, were you not full in between decks in in your judgment?
Objected to by Mr. Dodge, counsel for appellants.
A. I considered that the ship drew sufficient water, and did not wish any more cargo put in.
Q. Question repeated.
A. For that voyage I was.
Q. On what and where was there room between decks for more cargo?
A. We could have put in more pepper and some few boxes of tea.
Q. How high was the pepper stowed in between decks?
Objected to by Mr. Dodge for appellants.
327 A. Probably within six inches of the deck.
Q. Have you not already stated on this examination that that was as high as you could trim it?
Objected to by Mr. Dodge, counsel for appellants.
A. No, I have not.
Q. Was it any higher in the lower hold than it inwas between decks?
A. No, I should say not.
Q. When loading the ship did you not intend to fill the between-decks?
A. No, I should say we did not.

Q. When you started to load the ship, and before com-
328 mencing to take in cargo, did you not intend to fill the between-decks?

Objected to by Mr. Dodge.

A. I had no intentions at all about it. The vessel was consigned, and the agent was out there who loaded the ship.

Q. Whose agent was that?

Objected to by Mr. Dodge.

A. Crocker & Warren's.

Q. How many hatches has a brig?

Objected to by Mr. Dodge.

A. Some have two and some three.

Q. When three, what are they?

A. I call them the fore-hatch, main-hatch, and after-hatch.

329 Q. That includes no hatch in the forecastle or cabin, does it?

A. No, sir.

Q. Did you ever see a brig with a hatch in cabin to get down below, or for any purpose?

A. I never was in but one brig; she had no hatch in the cabin.

Q. Were you in the cabin in the Lynden?

A. I was, at work.

Q. How long ago, and was your attention called to the fact whether there was a hatch or not?

A. It was about eleven years ago I was in that vessel, as
330 near as I can recollect; if there had been a hatch there I think I would have seen it; I was by the vessel all the time she was discharging and loading.

Q. Latter part of the question repeated.

A. My attention was not called to the fact whether there was a hatch there or not.

Q. What work was you doing in the cabin?

A. Stowing cotton in the state-rooms.

Q. Was the Lynden the only brig you were ever in?

A. The Lynden was the only brig I ever went to sea in.

Re-examined.

Q. Have you sailed in brigs?

331 A. Yes, sir; that one—no others.

Q. With a cabin and forecastle on deck, and clear hold, would there be any hatchways to the cabin or forecastle?

A. I can't say anything about that; I have been in only one brig, and paid no attention to other brigs in particular.

Re-cross-examined.

Q. You say in your re-direct examination you never was in but one brig, and she had no hatch in her cabin; what brig was that?

A. The brig Lynden.

BENJ. C. TOWNSEND.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness's testimony is material and necessary in the cause in the caption of the said deposition named, and that the said witness is a seafaring man, and about to depart out of the jurisdiction of this court on a voyage to sea. I further certify that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctors for the appellee, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit. I further certify, that on the 13th and 14th day of January, in the year of our Lord one thousand eight hundred and fifty-eight, I was attended by Robert Dodge, esq., as counsel for the appellants, and C. Donohue, esq., counsel for appellee, and by the witness, who was of sound mind and lawful age, and the witness by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from such statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same with my own hand to the court for which the same was taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the

[L. S.]

CHAS. W. NEWTON, [SEAL.]

United States Commissioner, duly appointed by the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit.

Filed the 6 day of April, 1858.

BENJ. C. TOWNSEND.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

337 Be it remembered, that on this 28th and 29th days of January, in the year of our Lord one thousand eight hundred and fifty-eight, I, Charles W. Newton, a commissioner, duly appointed by the circuit court of the United States, for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act
338 of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, Thomas A. Holt, to testify and the truth to say, on the part and
339 behalf of the appellant, in a certain suit or matter of controversy, now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein George B. Moorewood et al. are appellants, and Lorenzo N. Enequist is appellee; and the said Thomas A. Holt being about the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Thomas A. Holt, and he did thereupon
340 depose, testify, and say as follows, viz: I am by profession a seafaring man, and reside in Boston, Massachusetts, and am about to proceed to sea as soon as I can get employment for my ship; I intend to leave this city for Boston on Saturday of this week; I arrived in this city from Boston yesterday morning; I have been a seafaring man about twenty-eight or thirty years.

Q. What voyages have you made; in what vessels, as to size, rig, capacity, or single or doubled decked?

A. I have been in brigs, single and double decked ships,
341 and a barque; my voyages have been made in the Mediterranean, South America, west coast of South America, Manilla or East India, and the Straits trades, known as Java, Sumatra and Malacca straits, Singapore and Penang being the principal ports of those straits, all of which is the East India trade.

Q. Between what ports of destination and return were these voyages made?

4296

A. In the Manilla trade; has been direct from Boston to Manilla and back. The Mediterranean trade has been the same from different ports of the Mediterranean and back to Boston. The
342 South American trade; I have been from Boston to a port on the east coast of South America, and thence to the Mediterranean, and back to Boston; likewise to a port in Cuba, thence back to Boston. On the west coast of South America; I have been one voyage to San Francisco, and there sold my ship, and no return made. I have been one voyage to the Sandwich Islands, thence back through the straits, through the China sea, into Java and the straits of Malacca; from thence to New York. All of these voyages mentioned by me above were made when I was
343 master; I have been master twenty-one years.

Q. How long have you been in the East India trade?

A. Eight years, about.

Q. What cargoes have you brought from the East Indies?

A. In the Manilla trade I have brought sugar, satin wood, hemp, indigo, hide-cuttings. I have brought cargoes from Java consisting of coffee, gum dammer, nutmegs, spices, pepper, ratans. I have loaded three parts of cargoes at Batavia, in Java, and those cargoes consisted of the articles above mentioned.

Q. With those partial Java cargoes where did you fill up?

Objected to by Mr. Andrews, counsel for respondent.

344 A. I filled up in Singapore, Penang and Padang, on the coast of Sumatra.

Q. With what cargo did you fill up at those places?

A. To my best recollection I filled up at Singapore with gambia, pearl sago, sago flour, tin, pepper—black pepper I mean—and some spices, nutmegs and mace, and ratans, tea, cassia vera, and cassia ligna; at Penang I filled up with tin, pepper, hides, cutch, gum benzoin; at Padang, coffee, pepper, India-rubber and ratans; in Penang I took rubber also.

Q. What is the appearance and nature of gambia and cutch, and are sugar, gambia, cutch and black pepper of a heating
345 nature or not; and if so, how are they relatively, heating or not?

A. When I receive gambia on board it is in compress bales or packages, in mats or gunny cloths, apparently in a solid state, but it depends somewhat upon the time it has been pressed; the longer it has been from the press the dryer it becomes; cutch is of a more liquid nature, but the longer it remains before shipping the more solid it becomes; pepper, black or white, is of a heating
346 nature; sugar likewise; gambia in a soft state would be liable to heat in connection with pepper, but the heat of the pepper usually before the close of the passage hardens the gambia or cutch, therefore there is no injury received by those two articles;

from my own experience, sometimes gambia and cutch will run together and come out one hardened mass.

Q. What vessel have you now, and to whom does she belong, and in what trade; how long have her owners been in that trade?

A. I am master of the barque Falcon, of 510 tons; she
347 belongs to Tuckerman, Townsend & Co., of Boston; the vessel is in the Batavia, Singapore, Penang and Padang, known as the Straits trade. The owners of the Falcon have been connected, to my best knowledge, with that trade for about six years.

Q. What is an assorted cargo, so called, in the Straits trade, and of what does it consist?

A. Tin, India-rubber, gutta percha, tea, cassia vera, cassia ligna, hides, pepper, nutmegs, mace, pearl sago, sago flour, cubebs, essential oils, gum benzoin, sugar, coffee, gambia, cutch, ratans, dammer.

Q. Are you familiar with the storage and treatment of such cargoes?

348 A. Yes, sir, from my own experience.

Q. If you had a remarkably tight and dry vessel, a brig of about 250 tons burthen, without any ventilators built in her, and clear hold, cabin and forecastle on deck, at Batavia or Padang, in the month of Dec'r, in any year, to load with a cargo of about 11,000 pockets or grass mat bags of coffee, 600 bags of black pepper, 600 bundles of cassia vera, about 100 baskets of India-rubber, with 40 casks of mace and nutmegs, and ratans for dunnage, how
349 would you stow it to protect it from sweat damage for a voyage from Padang or Batavia to this port?

A. If I were to load that cargo according to my experience and ideas I should dunnage with the India-rubber about the pump well and the bilges nearly amidships, where the water usually remains, according to the construction of the vessel, to prevent sea damage to whatever cargo of a perishable nature, to prevent the same cargo from coming in contact with the water, the same rubber to be covered with ratans, and well matted; whatever other vacant space not used by rubber for dunnage, I should use firewood, bam-
350 boos, or sapdan wood, if procurable, and then mat the same with double mats a proper distance from the ceiling of the vessel, according to the construction of the ship, as there can be no definite rules or principle without you know the qualities of the vessel by some experience; as regards stowing the ship with the cargo aforesaid, requiring no ballast, I should stow the coffee midships, and dunnage well the sides with ratans around the pump well and masts, and stanchions, then to be well matted over; then stow the coffee in this space, dunnaged as I have mentioned;
351 the nutmegs, mace, and cassia, I have been accustomed always to stow them aft by themselves; pepper I have been accustomed to stow farther forward; I then should stow the pepper

up the coffee with a suitable dunnage, such as ratans, against the coffee, then to be covered with mats or dry hides.

Q. Would you separate any portions of this cargo; and if so, which from the other, and how?

A. If I had that ship, I would keep the cargo in separate divisions as much as possible; the spices I would have aft by
352 themselves; mace and nutmegs I would stow abaft of the after hatch by themselves, and the separation between the pepper and the nutmegs would be taken up for the water-casks, spare sails, and such provisions as the law requires to be under deck on the passage home; on the sized vessel named, it would be six to eight feet; then forward of this space I would stow the pepper to the coffee, as I said before, and the separation between the coffee and the pepper I would protect by dunnage of rat-
353 ans standing up and down, to be covered by mats or dry hides, if I had them. If I had any spare space over the nutmegs, I would stow in the cassia vera.

Q. Would this cargo as described, be or not peculiarly liable to injury from sweat of the hold?

A. Yes, if not ventilated.

Q. Have you met with sweat of the hold? do you know its nature and causes?

A. In my own experience, I have met with very little sweat of the hold, because I have taken great precautions to prevent it; I have, however, seen, very frequently, sweat of the hold; the
354 causes originate mostly by the heat from the pepper, in connection with the certain qualities of the coffee, which is not usually in a perfect dry state, consequently without ventilation there must be more or less steam condensed coming into a cooler climate; and to prevent that, according to my practice, I have been accustomed to ventilate the ship by keeping the hatches or part of the hatches off during the voyage as much as possible, if the weather would permit; but usually during rainy weather in the trade-winds, I usually have a tarpaulin placed over
355 the main hatch, with a ridge-pole, tent-fashion, with the hatches off—that is, half the hatch off; the object of that tarpaulin (which is four or five feet above the hatches) is to protect the cargo from being damaged by the rain, in consequence of half that hatch being opened; the object of that is, to have the heated air pass from the hold of the ship out of the main hatch; the after hatch is usually covered by a booby-hatch; consequently I have always kept the after hatches off, as the booby-hatch
356 has, in my own experience, been sufficient to protect the cargo from injury by rain or bad weather, and also able to ventilate by the booby-hatch, on account of windows, doors and slides, in it; and during good weather, when there is no rain, I always kept wind-sail down the after hatch; the object was to

rarify the air below; forward, I have always been accustomed to keep the hatches off, the same as the main and aft, during the good weather, as much as possible.

Q. What will prevent injury to such cargo from sweat of the hold on such voyage?

357 A. Only by proper ventilation, as I have described before in my last answer, from my own experience.

Q. If you had a single-decked small brig, as described before, without ventilators built in her, with such cargo on such voyage, what would you do to protect it from sweat damage?

A. I should load the vessel as mentioned before, and ventilate it as I have described.

Q. Can there be any effectual ventilation of such cargo without a current of air is made to pass through it?

A. No.

358 Q. What, if any, air or circulation, or motion of air, is there in a tight hold in a vessel with the hatches down; and if such air be left in the hold, what is the result in such cargo and brig?

A. With that cargo of coffee and pepper, there would be great danger of sweat and steam on approaching a cooler climate, on account of the condensation of the hot meeting the cool air, originated by the heating qualities of the pepper and the moist condition of the coffee, usually received apparently in a dry state, which is the nature of the article.

359 Q. In what condition is the coffee usually received?

A. We usually receive the coffee in apparantly a green state—that is, in green color; although apparently dry, there is more or less moisture in the coffee when received.

Q. What would be the effect of matting the top of such cargo, and particularly around the hatchways of the hold, as to the prevention of sweat damage?

A. If you could mat the cargo, it would save it from injury to great extent.

Q. Do you mat the cargo under the hatchways?

A. I always do that.

360 Q. If a bulkhead reaching down from the deck six feet were placed in the hold of such a brig as before described, about 20 feet aft of the main hatch, and another bulkhead was placed athwart the brig in the hold at a point 15 to 16 feet forward of the main hatch, and the cargo as described stowed in the hold tight up to the deck, what would be the effect on the heat of the hold ventilation of such cargo or production of sweat damage, the main hatch kept battened down during the voyage?

361 A. It would be liable to damage on account of no ventilation caused by the heat of the hold.

Q. Without such bulkheads in that brig, but with the cargo

stowed close up to the deck as before described, and main hatch kept battened down, what would be the effect on the heat of the hold ventilation of the cargo, or production of sweat damage?

A. It would be liable to the same damage, but not to the same extent as you would with tight bulkheads.

Q. With the hatches all battened down throughout such voyage in that brig, with that cargo and those bulkheads, what
362 would be the result?

A. From my own experience the cargo would damage to a great extent.

Q. With such two bulkheads in the hold of that brig and that cargo, with one or more hatches opened fore and aft of those bulkheads, could there be any effectual ventilation?

A. No.

Q. If, by proper ventilation on such voyage when in warm climates, such cargo had been kept at about the temperature of the surrounding air, would or not sweat damage occur?

A. No.

Q. Is that the object to be secured by proper ventilation
363 as I described in last question?

A. Yes.

Q. Are hatches built in sections, and how many, and for what use and effect?

A. They are; the main hatches are usually divided into four pieces; but probably in a vessel of that size there would only be two; the fore and aft hatch are usually divided into two pieces; these pieces can be lifted separately.

Q. In a brig of 250 tons burthen did you ever see or hear of five hatches?

A. No.

Q. Is it good or bad stowage to put boat or spars over the
364 main hatch so close as to render it impossible to move off the hatch?

A. It would be bad stowage.

Q. Is it or not practicable or expedient with such cargo on such voyage to leave an air space in stowing across the top fore and aft, and does or not the settling of such cargo leave some air spaces?

A. My own experience is, I stow the cargo as close as possible to the deck, but always find that it will settle after stowing by its own weight, and the motion of the vessel six to twelve
365 inches, more or less, particularly coffee or pepper in bags.

Q. With a cargo in bags or baskets, is it good or bad stowage, or usual, to force this cargo in the hold up to the deck to fit the beams or carlins, or how is the top of such a cargo properly stowed?

A. Pepper in bags we usually stow tight as we can up to the beams. Between the carlins and beams we usually fill it up with

ratans for small stowage. Coffee in grass mats is a very tender article, and we have to stow them very closely to protect
366 them from chafing on account of the motion of the vessel, as far as possible, but not able to stow them so near the deck on account of breakages of packages, being of such a tender nature. We usually stow our cargo as near the deck as possible, but when we get near the deck, we cannot crowd them in on account of the liability of breaking.

Q. With a cargo stowed in such brig as you have last described, how much air space would there have been left on the stowage, and how much by settling during the voyage?

367 A. Six to twelve inches, from my own experience.

Q. With this cargo stowed as above, with such air-space, would there be any danger of shifting on the voyage?

A. No.

Adjourned to Jan'y 29th, at 2 o'c.

January 29th, 2 o'c.

The witness appears and libellants' counsel proceeds to the examination, as follows:

Q. If such cargo in such brig had been originally stowed tight up to deck, and had settled three or four inches on top, with those two bulkheads in the hold, and the main hatch between
368 those bulkheads kept battened down, could there have been any effectual ventilation of such cargo, or prevention of sweat damage?

A. No.

Q. What is the average heat of the atmosphere at Padang or Batavia in the first week or early part of December?

A. From eighty to eighty-four.

Q. Is that the summer season there?

A. The whole year around it don't vary much; that is the average heat—that is, within the tropics. In Batavia, Singapore, and Penang, Sumatra, the average heat, from my own experience and observation, by instruments, is about from eighty to eighty-four.

369 Q. On a voyage from Batavia to New York, starting about the first week of December, what is your course, what winds do you take, what is the average heat of the sea atmosphere in warm climates?

A. The course, as far as my recollection serves me, is west by south to southwest by south for Cape of Good Hope, but depends upon local circumstances. The heat averages from seventy-five to eighty-four in the tropics.

Q. What winds do you take; are they steady and regular? Describe them. Where do you strike the colder atmosphere,
370 and what is the temperature of that colder atmosphere?

A. After leaving the trade winds the winds are variable. After leaving Batavia, in Dec'r, that is, about the change of monsoons known by nautical men as little monsoons, but most generally at that season of the year the winds are variable on account of the change of the monsoons from southeast to the northwest; but after leaving the straits of Sunday, (this change of wind is met with in the straits of Sunday,) some few degrees from there, in my own experience, I have taken a fresh southeast trade wind,
371 which has usually been favorable nearly up to the island of Madagascar; from thence I have usually experienced variable winds to the Cape of Good Hope. The trade winds usually last to about the parallel of Madagascar. From the Cape of Good Hope, after rounding the cape, to the equator, on the Atlantic side, with one exception, I have always had fresh southeast trades. From the equator, in the North Atlantic ocean, I have usually, after two or three degrees north of the equator, taken the northeast trades to the latitude of 20 to 26 north; from thence to
372 New York or Boston have had variable winds. In the latitude of the trade winds, on the annual average, they are very regular—so much so, from my own experience in nautical science, we have to forelay those winds in approaching any particular port to the windward. As regards the temperature of the colder atmosphere, after leaving the trades, I never found it—although I have had favorable opportunities in doubling the cape—I never have had temperature, according to my belief, below 50°, but most generally above 60°.

Q. What is the temperature of the North Atlantic in the
373 latitude of New York on such a voyage?

A. From the equator through the trade winds the usual temperature is from eighty to about seventy; from the trades to the Gulf stream or soundings, in March, the average would be about sixty; from thence, on soundings, as we approach the coast, the cold weather commences. I have had the temperature from 50 thence below the freezing point.

Q. In the trade winds is the weather usually steady and favorable?

A. Yes.

Q. Is this heat, change of temperature, and course of sailing that you have just described uniform, well known in
374 the trade, always adopted and met, or not, on such voyages?

A. Upon the average generally so. Yes.

Q. As to the notion of the necessity keeping the hatches tightly battened down on the voyage in all weathers, do you know whence such notion arises?

Objected to by counsel for respondent.

A. In my own practice, which I have before answered, I have always been accustomed to keep the hatches off during good weather; but from certain knowledge from European masters I have always found that they had an impression, which I believe
375 some years heretofore been governed by certain rules (may be now existing) known as Lloyd's rules, that if the hatches are opened at sea they may *loose* the insurance.

Q. If the cargo, consisting of about 11,000 grass mat bags of coffee, 600 bags black pepper, 600 bundles cassia vera, 40 casks of mace and nutmegs, and 100 baskets of India-rubber, with ratans for dunnage, were stowed in such 250-ton brig, having a single deck, and no ventilators, about the first of Dec'r, for her voyage to New York, and treated in the following manner, viz: All the coffee amidships, under the main hatch, stowed tight up to
376 deck, extending 16 feet forward of main hatch to a bulkhead there placed athwart the hold, and 20 feet abaft of main hatch, to another bulkhead there placed athwart the hold, coffee filling all the space; main hatch kept battened down through the voyage till discharged; abaft the after bulkhead the 600 bags of black pepper, and the mace and nutmegs forward of the forward bulkhead; India-rubber at bottom, and cassia on the mats above the rubber; the bulkheads forming the only separations of
377 cargo; bottom and sides dunnaged with fire-wood and ratans, and mats over them, with no top mats, ratans, or other top covering of cargo anywhere; nothing rigged to get air into the hold, and no wind-sails used on a voyage of 98 days from Batavia to New York, with constant fine and warm weather, except the two or three last days when off this coast; starting from Batavia the first week in Dec'r, and arriving in New York the last of March following—was such treatment of cargo as thus described good or bad treatment as regards protection from sweat damage?

378 Objected to by J. C. Voorhees, respondent's counsel.

A. Not good treatment, from my own experience.

Q. Was it usual or customary treatment of such cargo in that trade?

A. Not in my own experience, or by regular traders.

Q. In passing from warmer to colder climates, with such cargo stowed and treated as described, what would be the effect as to sweat damage?

A. It would be liable to sweat and damage to the cargo.

Q. With such stowage and treatment of such cargo as described was anything done to prevent sweat damage?

A. From my own experience it was not done.

Q. Was such stowage and treatment of such cargo as described, or not, adapted to its destruction by sweat damage?

379 A. From my own experience it would be a damage; the

course adopted in this statement would be calculated to produce sweat damage.

Q. Did you ever see or know of such stowage or treatment of such cargo in that trade before? And if so, please state the same in detail, and the result.

A. I have loaded a vessel, the barque Keziah, in Manilla, with a general cargo, an assorted cargo; the vessel was well
380 stowed, the same as my own ship, lying at the same port, at the same time leaving the said port, my own ship being properly ventilated by ventilators down the main and fore hatches, and the hatches off in good weather, with wind-sail kept down the after hatch; my cargo arrived in Boston in the latter part of February in good order and free from sweat; the same barque, Keziah, kept her hatches calked and battened down without ventilation the whole voyage from Manilla to Boston, in the month of March; upon opening her hatches it was discovered that a large portion
381 of her cargo was injured by sweat damage; the stowage took place in Manilla, about October to November; the cargo in the barque Keziah, I believe, was sugar, Manilla hemp, hide cuttings, sapan-wood, indigo, and grass-cloth; my own cargo on board of my own ship consisted of sugar, hide cuttings, hemp, indigo, hides; I have known one ship, the ship Massachusetts, of Boston, with a general Manilla cargo, same as I have stated before, arrived in Boston in the winter months from Manilla with her hatches kept down; kept close hatches without any ven-
382 tilation during the passage; on the arrival at Boston, at the India wharf, on opening of her hatches, the steam rising from the cargo was of such extent they thought the ship was on fire—that is, the stevedores, and those persons about the ship—in consequence of the steam or appearance of smoke, as they had the fire-engines down to the vessel to put it out; there was an alarm of fire given, but there was no fire, only the condensation of the heated atmosphere, which caused the steam to come from the hold on account of not having proper ventilation during the
383 passage.

Q. In such stowage and treatment as I have described in my previous question of such cargo, would it be possible to prevent the heat of the black pepper from communicating to the coffee, or to the rest of the cargo?

A. No.

Q. Would such stowage and treatment of such cargo, as stated in my former question, produce the same result, so far as sweat damage is concerned, as if the coffee, cassia, nutmegs, and mace were all stowed together with the black pepper?

A. It would produce the same result.

384 Q. If on arrival here of such brig and cargo, stowed and treated as aforesaid, on lifting main hatch, the coffee

through several top tiers is found rotten, black, and badly sweat-damaged, a great deal of coffee loose in the main hold, and the cassia badly sweated, what is the cause of the injury?

A. Bad treatment, by my own experience.

Q. If you could have stowed and treated such cargo in your own way, could you have brought it here on such voyage without sweat damage or injury?

A. I believe I could.

Q. You have already described your own method of stow-
385 age, treatment, and ventilation of such cargo in that trade; is such method usual and customary in that trade?

A. Yes.

Q. Is such usage and custom and stowage, treatment, and ventilation, general in that trade?

A. As far as my knowledge extends I believe it is by the regular traders.

Q. Is it well established in that trade?

A. Yes, sir, as far as I know.

Q. Would you adopt such treatment in all cases with such cargoes?

A. Certainly.

THOMAS A. HOLT.

386 Adjourned to Feb'y 1, at 2 o'clock, for cross-examination. After waiting for one hour, and no one appearing to cross-examine the witness, his examination was closed.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the Uni-
387 ted States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness's testimony material and necessary in the cause in the caption of the said deposition named, and that he is a seafaring
388 man, and about to depart on a voyage to sea, and resides more than one hundred miles from the place of trial of this cause. I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and

served on the proctors of the appellee, to be present at the taking of the said deposition, and to put interrogatories if he or they might think fit. I further certify, that on the 28th and 29th day of January, in the year of our Lord one thousand eight
389 hundred and fifty-eight, I was attended by R. Dodge, esq., counsel for appellants, and Mr. Andrews & Voorhees, as counsel for appellees, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition
390 in my possession for the purpose of transmitting the same, with my own hand, to the court for which the same was taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this thirty-first day of January, in the year of our Lord one
[L. S.] thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-first.

CHARLES W. NEWTON,
391 *United States Commissioner, duly appointed by the Circuit Court of the United States, for the southern district of New York, in the second circuit.*

Filed the 1st day of April, 1858.

THOMAS A. HOLT.

UNITED STATES OF AMERICA,
Southern District of New York, city, county, and State of New York, ss.

Be it remembered, that on this 13th day of May, in the year of our Lord one thousand eight hundred and fifty-eight, I, Charles W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress
392 entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts

of the United States," passed September 24th, 1789, did call
393 and cause to be and personally appear before me, at my office at No. 74 Wall street, in the city of New York, in the said southern district of New York, in the State aforesaid, William H. Churchill, to testify and the truth to say, on the part and behalf of the appellants, in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the southern district of New York, wherein Lorenzo N. Enequist is appellee, and George B. Moorewood et al. appellants, and the said William H. Churchill being about
394 the age of forty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William H. Churchill, and he did thereupon depose, testify, and say as follows, viz: I reside in New York city, and am a shipmaster by profession; I am going out of this district to Portland, Connecticut, to reside, which is more than one hundred miles from this city; it is in the neighborhood of one hundred and fifty miles. I have been a seafaring man about twenty-eight years.

395 Q. What voyages have you made; in what vessels as to size, rig, capacity, or single or double deck?

A. Shanghai, in China, and return voyages from these places to New York, except the voyage to Shanghai; when I came back to New York as passenger these voyages were made in brigs and barques; their sizes were from 160 to 320 tons; the vessels were all single-deck.

Q. What cargoes have you brought?

A. From the Brazils such as coffee and hides principally; from the East Indies what is usually termed Straits cargo, such
396 as cocoanut oil, India-rubber, gutta-percha, ratans, buffalo horns, gambia, tin, nutmegs, mace, cassia, cloves, essential oil, and gums of various descriptions.

Q. Are you familiar with the stowage and treatment of coffee and spice cargoes?

Objected to by Mr. Andrews, counsel for appellee.

A. I am of coffee and East India cargoes, such as I have mentioned.

Q. If you had a very tight and snug vessel, a brig of about 250 tons burthen, without any ventilators built in her, forecastle
397 on deck, capt's cabin aft below, at an East India port, about the latitude and meridian of Batavia or Padang, in the month of December in any year, to load with a cargo of about eleven thousand pockets or grass mat bags of Java coffee, 600 bags of black pepper, 600 bundles of cassia yera, about 100 baskets of India-rubber, with 40 casks of mace and nutmegs, and ratans for dunnage, how would you stow it to protect it from sweat

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damage on a voyage from such East India port to New York?
398 Objected to by Mr. Andrews, counsel for appellee.

A. The first consideration would be as to the class and build of the vessel in order to dunnage it a sufficient height to prevent the ground tiers from getting damaged by any accumulation of water over the ceiling, dunnage to be carried up full four inches distant from the ceiling to the bilges, and from thence up to deck beams, with ratans or bamboos full two inches, the whole to be covered with matting; this is the preparation of the hold to receive the cargo; the portion of the vessel I should select for the
399 coffee would be midships, the most perishable portion of the cargo to be stowed in the dryest portions of the vessel, to be governed, however, according to quantities that might be shipped; the pepper I should place as near to the after hatch as possible, the spices abaft in the run of the vessel, and the India-rubber forward in the fore peak. I should, however, have mentioned that the stanchions should be matted, pump-well and mast dunnaged and matted, and in placing the mats in all cases so that any water passing would run as from a clapboard of a house; after the
400 cargo was in I should cover the whole with matting, lapped in the same way from the centre to the wings.

Q. Would you separate any portions of this cargo; and if so, how and which?

Obj. by Mr. Andrews.

A. All the separation I should make would be to mat next to the coffee, then a dunnage of ratans, and then mat again, and the spices the same way from the pepper. This answer I intend to comprise both sides of the coffee to be matted in the same way.

Q. Would such cargo be peculiarly liable to damage from
401 sweat of the hold?

Obj. by Mr. Andrews.

A. It would, unless sufficiently ventilated, either by proper ventilators built in the vessel or by keeping the hatches removed to admit a sufficient current of air to prevent the dampness and seat.

Q. Have you met with sweat of the hold; and if so, do you know its nature and cause?

Obj. by Mr. Andrews.

A. I have met with sweat of hold; it arises from the confined air, heat and gases generated by the want of ventilation or
402 sufficient current of air passing through the hold of the vessel.

Q. If a vegetable cargo of this kind, shipped in good order, but kept confined in a close hold in hot climates, on such voyage, without ventilation, are there or not gases evolved from this cargo in the hold which are always present?

Obj. to by Mr. Andrews.

A. To the best of my knowledge there is.

Q. Is it or not the nature of those gases to rise to the top of the cargo in such hold, and decompose the top tiers, and on
403 reaching colder climates to be condensed in the colder moisture of the deck, and fall in globules on the cargo?

Obj. to by Mr. Andrews, on the ground of its being leading, immaterial, incompetent and irrelevant.

A. It is.

Q. What is the object of ventilation with such cargo?

A. It is carry off these gases and dampness generated by the heat, for the better preservation of the cargo.

Q. If these gases are not let out, what is the consequence to such cargo in such hold?

A. Liability to decompose all perishable articles of a vegetable substance.

404 Q. Is the cargo described perishable or not?

Obj. to by Mr. Andrews.

A. It is, without a proper ventilation.

Q. With cargo shipped in the best condition, if not ventilated, would these gases be evolved and this decomposition you have spoken of ensue?

Obj. to as above.

A. To the best of my knowledge it would.

Q. Would these gases be increased or diminished by the vessel being very dry and tight, without ventilation?

Same obj. as above.

A. I think they would be increased.

Q. What is the effect of these gases on the color of those
405 articles?

A. It would have a tendency to darken their color or blacken them; the effect of them is often seen around on the beams and knees of the vessel by turning them a lead-color; it changes the color of the wood; and if painted, the paint, if white, does not color it so much; but if wood without paint, it makes it much darker.

Q. Then what is the occasion of sweat damage?

Same objection. (Question withdrawn.)

Q. Without the moisture from the deck, what damage is there to such cargo so stowed, without ventilation?

Same objection as above.

A. That decomposition must take place by these gases in the upper portion of the cargo.

Q. What effect then has the change to colder climates,
406 and the consequent deck moisture on such cargo, so stowed as before described?

Same objection as above.

A. The change has the effect of condensing the dampness and gases, so that it will drip on to the cargo from the deck, and consequently is liable to rot and decay—that is, the portions coming in contact with the moisture.

Q. If on arrival in New York, such cargo is found in the upper tiers sweat-damaged, bottom and sides sound, in what order
407 should you judge was that cargo when shipped?

Obj. same as above.

A. In good merchantable condition.

Q If that cargo at the time of shipment had been in bad order or damp, being unventilated on the voyage, what would have been the result?

Same obj. as above.

A. The probability is, that if that was the case, the coffee and the other perishable portions of that cargo would have been certainly ruined throughout, bottom and top—I mean the whole cargo.

Q. Can there be any effectual ventilation of such cargo without a current of air is made to pass through the whole cargo?

Same obj. as above.

408 A. There cannot.

Q. In stowing such cargo is an air space on top of such cargo essential; and if so, what, and for what purpose?

Same obj. as above.

A. It is important that there should be space sufficient, between the top of the cargo and beams and deck of the vessel, for a sufficient current of air to carry off the gases and dampness from the hold of the vessel from forward to aft.

Q. What is the effect of matting the top of such cargo, as to the prevention of sweat damage?

Same obj.

A. It is to absorb any portion of the globules of sweat from
409 the deck falling on to the cargo, and thereby preventing the damage.

Q. How much air space do you leave; and if such cargo be properly stowed and secured, is there any danger of shifting on the voyage when proper air space is left?

Same obj.

A. There could be no danger from shifting, even at a foot air space.

Adjourned to May 14, at 11 o'clock.

May 14, 11 o'clock.—Mr. Dodge, counsel for appellant, proceeds with the examination of the witness.

Q. Have you ever found in your experience the top mat-
410 ting of such cargoes to work off by the motion of the vessel; and if this matting is properly put on, is there any danger thereof?

A. There is not; I have never found in my experience the top matting to work off.

Q. Was there any difficulty or danger in constructing or using ventilators in such a brig as described for that voyage?

A. I cannot conceive that there could be any danger of any damage arising from ventilators properly placed and constructed on that vessel, and no difficulty in constructing them, I should think.

Q. What has been your practice in the brigs under your command, (in single-deck brigs, I mean,) as to constructing or using ventilators?

A. It has always been my practice, both in brigs, barques, and other vessels under my command, which were not fitted with
411 proper ventilators, to keep all the hatches off, when the weather would permit; my practice has been, when the weather would not permit, to place permanent ventilators or chimneys, by cutting holes and introducing them in the hatches, dimensions 9 inches to 1 foot square, made of wood of sufficient height to receive the draught or current air over the ship's rail; this ventilator is a square box of wood, with an opening at the side near the top, with the top covered, which extends some three or four inches below the hatch. I always have two of these ventilators, one forward and one aft—the one forward to receive
412 the fresh air, and the one aft reject the foul air—and the current of air is through all parts of the vessel forward and aft; they can be made on board the vessel by a ship's carpenter; you frequently see them on board of vessels in the coffee and fruit trade. I always have used them where they are not built in the vessel.

Q. What other mode of ventilation do you use besides?

A. In case of rain or bad weather, with the hatches open,
413 I use the tarpaulins over a ridge-pole over the hatches, formed in a tent-shape: I mean I keep the hatches open, and place a tarpaulin over them.

Q. How many deck-hatches have you ever seen on board of a brig?

A. Usually three; I never saw five.

Q. In a 220 ton single-deck brig, could there be four deck-hatches?

A. There might be, but I should consider it very unusual; there are more usually *but* two hatches in such a brig.

Q. How are these deck-hatches built, in sections or not?

A. In sections of two, sometimes four pieces; these sec-
414 tions are supported by combings and the cross-pieces, and can be lifted separate, and all hatches are built in that way.

Mr. Brady here appears for appellee, and requests that an objection may be entered to each and every question that may have been put to the witness to-day in the absence of Mr. Andrews.

Q. In such a voyage from an East India port, at about the latitude of Singapore, to New York, starting thence about the first week in December, and arriving here the end of March following, with such a cargo as described, single-decked brig, is there
415 any difficulty or danger in having or keeping all your hatches open during fair weather on such a voyage, in the warmer climates?

Obj'n by appellee.

A. I should think there was not at any time after the vessel had entered the trade-winds, and during its duration, either east or west of the Cape of Good Hope.

Q. If no ventilators or modes of ventilation of the kinds you have described were built in or used in that brig, on that voyage, with that cargo, was she in any way well fitted for such a voyage?

Obj. by appellee's counsel.

416 A. It would be impossible, under those circumstances, to bring that cargo without sweat damage. She was not well fitted for such a cargo on such a voyage.

Q. If on arrival here, and opening hatches, the cargo below or under the hatches is found badly sweat-damaged, could those hatches in your judgment have been kept open more than half the time during such voyage?

Obj'd to by appellee's counsel.

A. In my opinion, they could not have been kept open but a very short time, if any.

Q. Besides matting the top of the cargo, is it your prac-

417 tice or not to mat around the hatchways; and if so, what?

Obj.

A. If cargo is stowed in the hatchway, coming up within the combings, the combings should be matted in order to absorb any water that may come down between the hatches and combings, by not being properly secured in bad weather. If the utmost precaution is not taken in calking the hatches, there is more or less moisture around the hatchway.

Q. If a bulkhead were placed in the hold of such a brig as before described, athwart ship, at a point about twenty feet

418 aft of the main hatch, and another bulkhead also placed athwart the brig in the hold, at a point fifteen or sixteen feet forward of the main hatch, and the coffee stowed tight up to the deck in this space midships, main hatch kept battened down, never opened throughout the voyage, with pepper and spices aft of the aft bulkhead, cassia and rubber forward of the forward bulkhead, what would be the effect of such bulkheads and stowage on the heat of that hold and cargo, its ventilation, or the production of sweat damage.

Obj'd to by appellee's counsel.

419 A. With such bulkheads built and cargoes stowed as described, there could have been no ventilation or current of air passing from forward to aft in such hold; consequently all heat and dampness arising in the section comprised between the bulkheads could not have escaped, and consequently must have been condensed to sweat and dropped on to the cargo, thereby causing great sweat damage. Were I to stow cargo in that manner, with bulk-

head as above described, and hatches so arranged that they could not be conveniently taken off, I should insert a chimney or ventilator as already described, into said hatch, thereby allowing the dampness and steam and foul air to escape.

420 Q. If you place your boats or spars over the main hatch on board a brig, how do you rig the boat?

Obj. to by appellee's counsel.

A. The boat is generally placed in chucks on the deck, with the keel of sufficient height to allow the hatch to be lifted beneath the keel; this is the manner in which I have always arranged the boat where the arrangements made it necessary to so stow the boat.

421 Q. If the boat and spars were so rigged over the hatch as to prevent the removal of the hatch, would that be good seamanship or treatment of the cargo or not?

Obj'n as above.

A. Such stowage is often practised, but I should consider it injudicious, and I should think it was not good seamanship or treatment of the cargo.

Q. Is it or not good seamanship on such voyage with such cargo to keep all the hatches open in suitable weather in the warmer climates?

Obj. to by Mr. Andrews.

A. It is, and very necessary for the preservation of a cargo of such description.

422 Q. Without such bulkhead in such hold as before described, with the cargo stowed close up to the deck throughout as before described, and main hatch kept tight down throughout the voyage, what would be the result on the heat of the hold as to sweat damage, &c.?

Obj. to by Mr. Andrews, counsel for appellee.

A. There could be no circulation of air to prevent sweat damage.

Q. With all the hatches tight down, with such stowage up to deck, and such bulkheads, what would be the result?

Obj. to by Mr. Andrews.

A. All the top cargo must inevitably been damaged by sweat.

423 Q. With such two bulkheads in the hold, and that cargo, and such stowage, main hatch down, and one or more of the hatches open fore and aft, could there be any effectual ventilation?

Obj. to by Mr. Andrews.

A. There could not.

Q. If not, what would be the result?

Obj'd by Mr. Andrews.

A. Great sweat damage in the section comprised within the bulkheads more particularly.

Q. If, by proper ventilation on such voyage when in warmer

climates, such cargo had been kept at about the temperature of the surrounding air, would or not sweat damage occur on changing to a colder climate?

Obj. to by Mr. Andrews.

424 A. In changing from the warmer to the colder climate sweat damage might occur, if obliged by bad weather to close the means of ventilation, but with the same continued ventilation it would not.

Question repeated. Same obj'n.

A. It would not.

Q. Is that the object to be secured by proper ventilation?

Same obj'n.

A. It is to prevent sweat damage.

Q. How is Java coffee bagged or usually shipped?

A. In pockets or bags of a light slight texture manufactured of a species of grass; there is about sixty pounds in each.

Q. How is cassia, pepper, and spices usually shipped?

Same obj'n.

425 A. Cassia in mats, pepper in bags, and spices in cases and bags; I never have carried cassia vera.

Q. With such cargo, is it good or bad stowage, or usual, to crowd it in the hold tight up to the deck-beams and carlins, or how is the top of such a cargo usually stowed?

Same obj'n.

A. It would not be good stowage so crowded as to prevent mats being placed between the cargo and deck-beams.

Q. If such cargo had been originally stowed tight up to

426 deck as I have described, and had settled three or four inches with those bulkheads in the hold, and main hatch kept tight down, could there have been any effectual ventilation of such cargo?

Same obj'n.

A. There could not.

Q. What is the average heat in December of Penang and Singapore, and the ports on the Straits of Sunda or its vicinity?

Obj.

A. To the best of my recollection an average of about eighty; it is their summer.

Q. On a voyage thence to New York, starting in December and arriving in March, what is the course of the winds and heat

427 of the sea atmosphere?

Same obj'n.

A. We take the southeast trade winds after getting clear of the land, and carry them usually to about the parallel of Madagascar, and thence have variable winds around the Cape of Good Hope again with the southeast trades to four or five degrees north of the equator, and northeast trade winds from thence to about the par-

allel of from twenty-eight to thirty north, which is the same latitude of Bermuda and Hatteras, and variable winds from thence to New York. The temperature throughout the trades would
428 be from seventy to seventy-five, and upon quitting the trades the temperature of the sea atmosphere becomes colder; also off the Cape of Good Hope the temperature gradually becomes colder as we approach the land, and as we approach New York in that season it would be very cold.

Q. Is the course of sailing, heat, change of temperature, that you have just described, uniform, well known in the trade, always met or adopted or not on such voyages?

(Same obj'n.)

A. As far as my own experience it is.

Q. With such a brig and cargo, if you had stowed her
429 and brought it to this port on that voyage, could you have brought such cargo free from sweat damage?

(Same obj'n as above.)

A. I have no doubt I could.

Q. If the cargo, consisting of about 11,000 pockets of grass mat bags of coffee, 600 bags of black pepper, 600 bundles of cassia vera, 40 casks of mace and nutmegs, 100 baskets of India-rubber, with ratans for dunnage, was stowed in such 250 ton brig, having a single deck and no ventilators, starting about the first of December for a voyage to New York, and treated in the following man-
430 ner, viz: all the coffee in grass mat bags in midships under the main hatch, stowed tight up to decks, extending 16 feet forward of the main hatch to a bulkhead there placed athwart the hold, and 20 feet abaft the main hatch to another bulkhead there placed athwart the hold; coffee filling all this space; main hatch kept tight down through the voyage, until discharged abaft the after bulkhead; the 600 bags of black pepper lying on top of the mace and nutmegs, forward of the forward bulkhead; cassia on top of the India-rubber, the bulkheads forming the only
431 separation of the cargo, bottom and sides dunnaged with fire-wood and ratans, and mats over them, with no top mats, ratans, or other top covering of cargo anywhere; nothing rigged to get air into the hold, and no wind-sails used, on a voyage of 98 days from Batavia, or an East India port in that vicinity, to New York, with constant fine and warm weather, except the two or three last days, when off this coast; starting thence the first week in December and arriving in New York the last of March following—was such treatment of cargo as thus described
432 good or bad treatment as regards protection from sweat damage?

(Same obj'n.)

A. It was decidedly very bad treatment, in my opinion.

4306

Q. Was it usual or customary treatment?
(Same obj'n.)
A. To my knowledge it was not.
Q. In passing from warm to colder climates, with such cargo so stowed and treated as described, what would be the effect as to sweat damage?
(Same obj'n.)
A. It would be impossible for the cargo to escape the upper tiers being very badly damaged?

Q. Was that treatment as described about the same treat-
433 ment as would be expected if the cargo had been stone ballast?
(Same obj'n.)
A. It would, or with a cargo of no value, or not a perishable cargo.
Q. With those bulkheads in the hold, and with stowage as described, was or not the same result produced as though the whole cargo had been stowed tight up to deck in one mass?
(Same obj'n.)
A. In my opinion the result would be the same.
Q. Was anything done then to prevent sweat damage with such stowage and treatment as described?
(Same objection.)
A. I do not think there could have been possibly anything done.

434 Q. Was such stowage and treatment as described adapted or not to the destruction of such cargo by sweat damage?
(Same objection.)
A. I should judge it was.
Q. If on arrival here of such brig and cargo, stowed and treated as aforesaid, on lifting the hatches the coffee through several top tiers is found rotten, black, and badly sweat-damaged, great deal of coffee loose in the hold, and the rest of the cargo badly sweated, what was, in your judgment, the cause of such injury?
(Same obj'n.)
A. The entire absence of any ventilation.
Q. You have already described your own treatment and stowage, method of ventilation of such cargo, in that trade; is such method and treatment usual and customary in that trade?
(Same obj'n.)
A. From my own knowledge and experience it is.
Q. Is it general?
(Same obj'n.)
A. It is.

435 Q. Is it well established in that trade?
(Same obj'n.)
A. It is.

Q. Would you adopt such treatment in all cases with such cargo?

(Same obj'n.)

A. I would.

Q. What is the comparative heat of those ports in South America and East India you have spoken of?

(Same obj'n.)

A. Being in the tropics, the heat would be nearly the same.

Q. In voyages from there here, from the South American ports, what is the difference, if any, in the course of sailing, winds, heat of sea-air, from the East India voyages?

(Same obj'n.)

436 A. The course of sailing differs by making a more northerly course; the winds and temperature of the sea-air is about the same, and the change of temperature in the same seasons is about the same; I have frequently fallen in with vessels from the East Indies on my passage from Brazils to New York.

Q. How is South American coffee shipped?

(Same obj'n.)

A. In strong hemp bags, containing about 100 pounds to the bag.

Q. Is there any difference between that and Java coffee, as to its delicacy and susceptibility as to damage by ship sweat?

(Same obj'n.)

437 A. I am not aware that there is any difference; I would use the same precaution with coffee from any part of the world.

Adjourned to May 15th, 12 o'c.

May 15th.—Parties appear, and on motion of deft's counsel adj'd for cross-exam'n to 20th, at 3 o'c.

WM. H. CHURCHILL.

Cross-examined by Mr. Donohue, May 20th.

I have made one voyage to Buenos Ayres, and then sold
438 my vessel and came home as passenger.

Q. How many voyages to Monteviedo?

A. Two, including the one to Buenos Ayres.

Q. What cargo did you bring back from Monteviedo on the voyage on which you came back as mate?

A. Hides.

Q. How many voyages did you make to Rio Grande?

A. Some eight or nine as master; several in the brig Orbit; there were some three voyages; I made some six or seven in the Frederick Demming, don't remember which; I made no more voyages in the Rio Grande trade.

Q. What cargoes did you bring in the Orbit?

439 A. Hides, hair, horns, and bones, and the same cargoes in the Demming.

Q. How many voyages to Rio de Janeiro?
A. Three.
Q. In what vessels?
A. Two in the barque Frederick Demming, and one in the barque Compier.
Q. What cargo did you bring the first cargo of the Frederick Demming?
A. Coffee and rosewood.
Q. How did you stow the coffee?
A. Vessel dunnaged well in the bottom; ceiling lined with mats; the top of cargo covered with mats.
Q. Have you anything else to say in reference to the stowage of that cargo?
440 A. The stanchions I matted at that time, dunnaged the pump and masts well, and matted over them; I mean I matted over the dunnage.
Q. What cargo did you bring the second voyage from Rio?
A. Coffee and hides, which were stowed in the same manner.
Q. What was your cargo on the third voyage from Rio?
A. Coffee and hides, stowed in like manner.
Q. On the voyage to Singapore, Penang and back, did you take any cargo in at Singapore?
A. I did.
Q. What?
441 A. Cocoanut oil, gambia, ratans, gutta-percha; spices such as nutmegs, cloves, cassia; pearl shells, and gums of various descriptions, and essential oils.
Q. What did you take in at Penang?
A. India-rubber, tin, and spices, such as above named.
Q. What vessel was that in?
A. Barque Esperanza.
Q. Single or double deck vessel?
A. Single.
Q. From Shanghai to New York, in what vessel and in what cargo?
A. I came as passenger in the ship Catha; I sold my vessel at Shanghai; that was the only voyage I made to Shanghai.
Q. Did you ever have coffee and pepper in the same vessel in which you were master?
A. I have not.
442 Q. What vessel are you in now?
A. In the brig Echo, in the Rio Grande trade.
Q. You say you have met with sweat of the hold in vessels; were those any of the vessels you have mentioned above?
A. They were, but not sufficient to do any damage.
Q. Did you ever have a cargo to arrive in New York, the upper

tiers sweat-damaged and bottom and sides sound; I mean in any of the vessels you have commanded above referred to?

A. I have never brought any cargoes that have been damaged by sweat, from the precautions taken to prevent such sweat
443 damage by thorough and proper ventilation of the vessels.

Mr. Donohue objects to the answer of the question as not responsive, and volunteered by the witness.

Question repeated.

A. I have not.

Q. Have you ever had on board of your vessel, or vessels, any such cargo as you have described, shipped in bad order or damp, and not ventilated on the voyage?

Obj. to by Mr. Dodge.

A. I have not.

Q. In stowing the coffee on your voyages, how near to the deck-beams did you stow it?

A. Within a sufficient distance to allow it to be covered
444 with the matting on the top.

Q. That is, you mean room enough between the coffee and the beams to put the matting?

A. Yes, sir.

Q. Did you ever carry pepper in bulk?

A. I never have.

Q. Have you ever performed a voyage in a brig to the East Indies?

A. I have not.

Q. Did you ever see the brig Sultana?

A. Not to my knowledge.

Q. In the brigs you have commanded, how many hatches had they on deck?

A. Two.

Q. Never more?

A. No more.

445 Q. Would such a vessel have a hatch leading from the cabin that might be opened below?

(Objected to by Mr. Dodge.)

A. If the cabin was below deck, she would probably have what they call a run scuttle; if a cabin on deck, some might and some might not—usually not.

Q. Would such a vessel have a scuttle or hatch in the forcastle leading below or into the hold?

(Obj. by Mr. Dodge.)

A. They might.

Q. Have you ever seen a vessel fitted as described in the question marked "C. W. N." No. 1, on the direct examination?

446 A. I never have.

Q. Have you ever brought coffee from the East Indies?

Question withdrawn.

Re-direct Examination.

Q. When do you expect to sail, and from what port?

A. On Saturday of this week, or Monday next.

Q. What kind of rig and size of vessels were you in on East India voyages?

A. Barque rig, single deck, three hundred and twelve tons.

Q. With scuttles in forecastles, or cabin leading below, with bulkheads in hold, as described in the direct examination, cargo close up to deck, and main hatch kept down over the coffee
447 on the voyage, could there have been any effectual ventilation of that cargo?

A. There could not.

Q. Have you seen coffee cargoes arrive sweat-damaged?

A. I have.

Q. Have you seen pepper and coffee stowed on board of the same vessels?

A. I have.

WM. H. CHURCHILL.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Chas. W. Newton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affi-
448 davits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness's testimony material and
449 necessary in the cause in the caption of the said deposition named, and that he is a seafaring man, and about to leave this port and go out of the jurisdiction of this court more than one hundred miles from the place designated for the trial.

I further certify, that a notification of the time and place of taking the said deposition, signed by me, was made out and served on the proctors for the appellee to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit.

450 I further certify, that on the 13th day of May, in the year of our Lord one thousand eight hundred and fifty-eight, I was attended by the counsel for the respective parties and by the witness, who was of sound mind and lawful age, and the witness

was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and counsel, and after carefully reading the same to the witness, he subscribed the same in my presence. I have
451 retained the said deposition in my possession for the purpose of handing the same with my own hand the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 20th day of May, in the year of our Lord one thou-
[L. S.] sand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

452 CHAS. W. NEWTON,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Filed the 23d day of June, 1858.

WM. H. CHURCHILL.

453 At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and fifty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

LORENZO N. ENEQUIST, Libellant and Appellee,
vs.
GEORGE B. MOREWOOD and als., Respondents and Appellants.

The appeal from the district court in this case coming on
454 to be heard, Mr. Beebe reads evidence from apostles on the part of libellant and appellee.

Mr. Dodge reads evidence from the apostles on the part of respondents and appellants.

Also deposition of Wm. G. Balley.
Do. Charles H. Brown.
Do. Converse F. Plumer.
Do. Benjamin C. Townsend.
Do. Thomas A. Holt.
Do. Wm. H. Churchill.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and fifty-eight:

Present, the Honorable Samuel Nelson, an associate jus-
455 tice of the Supreme Court of the United States.

LORENZO N. ENEQUIST, Libellant and Appellee,
vs.
GEORGE B. MOREWOOD and al., Respondents and Appellees.

This cause being still on hearing, Mr. Donohue opens the case on the part of the libellant and appellee.

Mr. Dodge is heard on the part of appellants.

Mr. Benedict is heard on the same side.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the twenty-ninth day of September, in the year of our
456 Lord one thousand eight hundred and fifty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

LORENZO N. ENEQUIST, Libellant and Appellee,
vs.
GEORGE B. MOREWOOD and al., Respondents and Appellants.

This cause being still on hearing, Mr. Beebe is heard in reply on the part of libellant and appellee.

Curia advisari vult.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Saturday,
457 the second day of October, in the year of our Lord one thousand eight hundred and fifty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

LORENZO N. ENEQUIST, Libellant and Appellee,
vs.
GEORGE B. MOREWOOD and al., Respondents and Appellants.

This cause having come up on an appeal from the district court

of the United States for the southern district of New York, and the same having been heard and argued, and due deliberation having been thereupon had, it is ordered and adjudged that the decree of the said district court be, and the same is hereby, in all things affirmed, with costs to be taxed.

458 Circuit Court of the United States for the southern dist. of New York, in the 2d circuit.

GEORGE B. MOREWOOD, JOHN R. MOREWOOD, FREDERIC R. ROUTH, Appellants and Respondents,
vs.
LORENZO N. ENEQUIST, Libel'nt and Appellee.

To the Honorable the Supreme Court of the United States:

The appeal of George B. Morewood, John R. Morewood, and Frederic R. Routh, respectfully showeth:

That on the 29th day of March, 1856, the above named Lorenzo N. Enequist filed his libel in personam, in the district court
459 of the United States for the southern district of New York, against your petitioners, the appellants herein, in a cause, civil and maritime, for the recovery of freight on a certain cargo alleged to have been carried by said libellants, for said appellants, from Batavia to New York.

That process duly issued on said libel; and your petitioners thereupon filed their answer to said libel, alleging damage to said cargo by the acts and negligence of the libellant, and claiming deduction from the freight money therefor, and such proceedings were had in the said cause, that on the first day of October, 1857,
460 a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant recover against the said respondents, appellants, the sum of eleven thousand three hundred and seventy-two dollars and fifty-six cents, together with costs.

And that after such final decree your petitioners duly appealed therefrom, and from every part thereof, to the circuit court of the United States, second circuit, for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had
461 in the said circuit court, that afterwards, on the second day of October, 1858, the said circuit court made and pronounced its final decree upon the hearing thereof upon said appeal, whereby said decree of the district court was in all things affirmed with costs, which said decree of the circuit court is, as these appellants are advised, erroneous and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree

of said circuit court to the Supreme Court of the United
462 States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and all the proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed with costs, and a decree may be made for the damage and interest alleged in said answer herein, or such other decree as to the said Supreme Court shall seem just.

463 Dated N. Y., October 4, 1858.

FREDERIC R. ROUTH.

ROBT. DODGE,
Proctor for App'lnt.

(*Endorsed:*)

Circuit Court. U. S., so. district N. Y., 2d circuit. George B. Morewood and al., resp'dt and app'lnt, vs. Lorenzo N. Enequist, lib'lnt and appellee. Appeal.

ROB'T DODGE,
Proct. App'lnts.

To LORENZO N. ENEQUIST, *Appellee.*

Filed Oct. 5, 1858.

Circuit Court of the United States of America for the southern district of New York, in the second circuit.

GEORGE B. MOREWOOD, JOHN R. MOREWOOD, and Frederic R. Routh, App'lnts and Respondents, vs. LORENZO N. ENEQUIST, Lib'lnt, Appellee. } Bond for Costs.

Know all men by these presents, that we, Frederic R. Routh, Thomas B. Coddington, and Marshall Lefferts, of the city
464 of New York, are held and firmly bound unto the above named Lorenzo N. Enequist in the sum of twenty-four thousand dollars, to be paid to the said appellee, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, fimly by these presents. Sealed with our seals, and dated the eighth day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas the above named appellants have prosecuted an
465 appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above entitled suit by the judge of the

circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

FREDERIC R. ROUTH. [L. S.]
T. B. CODDINGTON. [L. S.]
MARSHALL LEFFERTS. [L. S.]

466 Sealed and delivered, and taken and acknowledged, this 8th day of Oct., 1858, before me.

CHAS. W. NEWTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Thomas B. Coddington and Marshall Lefferts, being duly sworn, do depose and say, and each for himself saith, that he is worth the sum of twenty-four thousand dollars over and above all his just debts and liabilities.

T. B. CODDINGTON,
MARSHALL LEFFERTS.

Sworn to this 8th day of October, A. D. 1858, before me.

CHAS. W. NEWTON,
U. S. Com'r.

467 I approve of the above bond and the sufficiency of the sureties thereto.

N. Y., Oct. 9, 1858.

SAML. R. BETTS.

Filed this 8th day of Oct., 1858.

By the Honorable Samuel R. Betts, one of the judges of the Circuit Court of the United States for the southern district of New York, in the second circuit.

468 To Lorenzo N. Enequist:

Whereas George B. Morewood, John R. Morewood, and Frederic R. Routh have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Lorenzo N. Enequist, against the said George B. Morewood, John R. Morewood and Frederic R. Routh, and have filed the security required by law, you are therefore hereby cited to appear before the said

469 Supreme Court, at the city of Washington, on the first

Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the second circuit, the ninth day of October, in the year of our Lord 1858, and of the independence of the United States the eighty-third.

SAML. R. BETTS.

We admit service of a copy of the within citation Oct. 12, 1858, N. Y.

BEEBE, DEAN & DONOHUE,
Proctors for Appellee in Circuit Court.

470 SOUTHERN DISTRICT OF NEW YORK, *ss.*

Robert Dodge, of said district, being sworn, says that he served on Lorenzo N. Enequist, the appellee, a copy of the appeal filed in this cause, on the 5th day of Oct., 1858, with the clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by lodging a copy of said appeal for said appellee in the office of said clerk, on said 5th day of Oct., 1858.

ROBT. DODGE.

Sworn to this 12th day of Oct., 1858.

CHAS. W. NEWTON,
U. S. Com'r.

471 Endorsed: Geo. B. Morewood, John R. Morewood and Frederic R. Routh, appellants, resp'dts, vs. Lorenzo N. Enequest, lib'nt and appellee. Proof service citation and appeal. Robt. Dodge, pro. app'lnt.

Filed Oct. 13th, 1858.

Filed 16 Nov., 1858.